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# CLEAN AIR ACT AMENDMENTS

Y 4. C 73/8: 104-32

Clean Air Act Amendments, Serial No...

## HEARING

BEFORE THE

SUBCOMMITTEE ON

OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

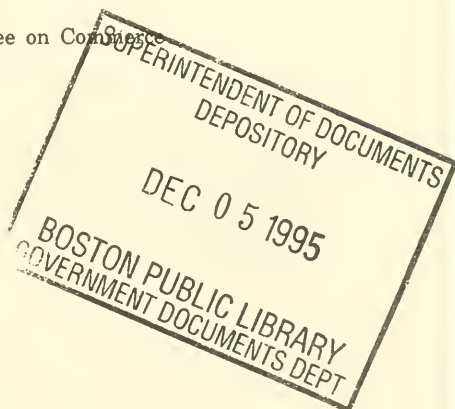
ON

TITLE V PERMITS

MAY 18, 1995

**Serial No. 104-32**

Printed for the use of the Committee on Commerce



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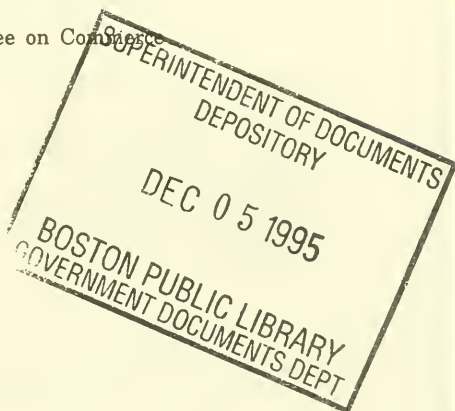
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# CLEAN AIR ACT AMENDMENTS

## Title V Permits

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THURSDAY, MAY 18, 1995

HOUSE OF REPRESENTATIVES  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:02 a.m., in room 2322, Rayburn House Office Building, Hon. Joe Barton (chairman) presiding.

Members present: Representatives Barton, Cox, Franks, Crapo, Burr, Wyden, Waxman, Eschoo, Klink, and Dingell.

Staff present: Bob Meyers, majority counsel, Stephen Sayle, majority counsel, Reid Stuntz, minority counsel, and William Tyndall, minority counsel.

Mr. BARTON. The committee will come to order.

Today, the Oversight and Investigations Subcommittee embarks upon its fifth hearing concerning the implementation of the Clean Air Act Amendments of 1990.

Our subject matter today is title V of the Clean Air Act, which provides for federally-enforceable operating permits. As anyone who is vaguely familiar with this title knows, the rules to implement it are lengthy, prescriptive and difficult to interpret.

Title V rules have also been the subject of over 20 separate legal actions, a proposed but subsequently abandoned revision in August 1994 and, as we speak, continuing discussions with stakeholder groups. A predecisional draft is now being circulated to revise proposed rules which were proposed to simplify earlier rules.

In other words, not only did we not get it right the first time, we didn't get it right the second time either. In life, as in baseball, the two being nearly interchangeable, we need to watch out for the third strike.

I think it is a fair assessment to say that title V has been plagued by regulatory uncertainty and understandable confusion in the regulated community. Title V has also been a moving target, and programs and permit applications approved today may be outdated tomorrow.

There is, however, one consistent fact with respect to this title, and that fact is expressed in the binders that I have placed on the dias before me. This foot high stack is one application for a single permit for one industrial facility in the Midwest, one facility. One application out of an expected 34,000.

Moreover, what is being trucked in from the anteroom is another application. This application is a little bit larger, approximately 6



feet of paperwork. Again, one application. There are over 9,000 such facilities nationwide. When regulations get to this level of detail, I think that we need to review just how this came to be.

The confusion over title V, that is the reality. Affected sources across the country are filling out mounds of paperwork specifying in excruciating detail emission estimates, potentials to emit and maximum theoretical calculations based upon operating sources 24 hours a day, 365 days a year. Title V regulators are requesting stack heights, operating temperatures, and items like exhaust gas discharge direction.

Thus, we need to seriously examine whether the current process complies with the congressional intent that title V merely act as a compilation of other Clean Air Act standards and limitations.

Applications like the ones before me seriously bring into question whether the program is, indeed, working as intended.

We will hear later today that this situation is changing, that an effort is underway to make title V more flexible, less costly, less duplicative of existing State or local programs. I encourage this process and look forward to receiving this testimony from officials of the EPA.

However, I must emphasize that the reality today is that Part 70 is still in effect, that the August 29th proposed rule has not been withdrawn and that sources are filing permits like the ones before us at a substantial cost to the economy.

The issue today is not environmental protection. Standards and limitations designed to protect the environment are found in titles I through IV and title VI of the act. The issue today is whether title V has worked as intended and whether EPA and permitting authorities have properly interpreted its requirements.

From the papers in front of me, I must initially state that I have my doubts.

[The referenced subcommittee memorandum and attachments follow:]



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## U.S. House of Representatives Committee on Commerce

Room 2125, Rayburn House Office Building  
 Washington, DC 20515-6115

May 17, 1995

Memorandum to: Members, Subcommittee on Oversight and Investigations

From: Bob Meyers, Majority Counsel

Re: May 18, 1995, Hearing on Implementation of Title V of the Clean Air Act Amendments of 1990

On Thursday, May 18, 1995, the Subcommittee will hold the fifth in a series of oversight hearings regarding the implementation of the 1990 Clean Air Act Amendments. The subject of this hearing will be Title V of the 1990 Amendments, Permits.

Testifying at the hearing will be representatives from sources and a citizen affected by Title V requirements, state governments who must administer EPA-approved Title V programs, and Mary Nichols, Assistant Administrator for Air and Radiation of the U.S. Environmental Protection Agency.

### Summary

Title V of the Clean Air Act (CAA) requires regulated sources to obtain permits in order to be able to continue to operate. Each permit is required to contain all of the applicable requirements found elsewhere in the CAA for that source. The general intent of Title V is to facilitate the compliance of a source with the CAA by providing regulators with a listing of applicable CAA requirements maintained in one place.

Under the Clean Air Act Amendments of 1990 (CAAA), EPA was required to promulgate regulations for Title V by November 15, 1991, establishing the minimum elements of the permit programs to be adopted by states and localities (the "permitting authorities" under Title V). States and localities were then required to develop and submit to EPA a permit program that complied with EPA's regulations by November 15, 1993.

Under the provisions of the CAAA, as soon as EPA approves the permit plan of a state or locality, affected sources are given one year to submit a permit application. If a permitting authority fails to submit a program to EPA or EPA disapproves a program, EPA is required to apply sanctions (emission offsets and a ban on federal highway construction funds) in 18 months, unless the problems in the state or local permit program are remedied.

In the four and one-half years since the 1990 Clean Air Act Amendments provisions on Title V became law, several issues have arisen surrounding EPA's implementation of the program.

- \* **Regulatory Uncertainty:** While EPA issued a final rule to implement the legislative provisions of Title V on July 21, 1992 -- state, industry, and environmental groups all

challenged the rule. EPA thus proposed modifications to the rule on August 24, 1994, and then further announced in January 1995 that it would begin work on a new proposal, presently being circulated as a predecisional draft.

This regulatory "moving target" has created difficulties for both permitting authorities and sources that are required to comply with the legislative deadlines established by the CAA. To date, 11 states and 10 localities have received full approval for their permit programs; other states and localities have submitted programs for approval and/or have received interim approval. Questions have been raised as to the impact of revisions on previously approved programs (and sources operating under those programs) and under programs (and sources) now being reviewed.

- **Program Costs:** In 1992, EPA estimated the cost of the Title V program at \$526 million per year. Industry experience to date suggests that the cost may be much higher, ranging from several hundred thousand dollars to several million dollars just to submit permit applications for larger sources (of which there are an estimated 9,160).
- **Proper Federal/State/Local Relationship:** Critics charge that EPA did not build off successful preexisting state programs in designing the federal permit program, but instead developed a prescriptive and overly burdensome approach to implementation that forces states to significantly revamp their own programs. In addition, some have criticized the extent of EPA's oversight of the program (e.g., the review of individual permit applications and permit revisions as required by statute). Thus, an issue with respect to Title V is the proper relationship between the federal government and state and local permitting authorities and the relative responsibilities and administrative roles of each entity.
- **Permit Revision Process:** Under the regulations that have been promulgated to date, as well as the August 24, 1994, proposed rule, many sources will be forced to revise their permits through a lengthy permit revision process before being able to make changes in plant operations. Critics have charged that EPA's implementation of Title V has added unnecessary complexity and further delays, imposing significant costs and burdens which will affect the ability of affected sources to compete effectively in the domestic and international marketplace.
- **Overall environmental benefits:** Some have questioned whether the expected environmental benefits of Title V justify the substantial implementation costs and administrative burden of the regulations. Since Title V essentially acts as a compilation of existing CAA requirements (and does not add new standards or limitations) it is argued that expenses incurred do not directly result in significant benefits.

### Brief Legislative History

If one were to judge the magnitude of Title V based solely on its legislative language and history, miscalculation could easily occur. First, Title V of the Clean Air Act Amendments of 1990 is not exceedingly long (the legislative language consumes barely 14 pages of the conference report) and there is a notable dearth of legislative history regarding the new provisions (e.g., the conference report devoted just over one page to Title V in its Joint Explanatory Statement).

In addition, little public debate occurred on Title V during House consideration of the 1990 Amendments. The former Energy and Commerce Committee deferred negotiations on Title IV of H.R. 3030 (the permit title in the original House bill) until the period between committee and initial floor consideration of the 1990 Amendments. While two amendments to Title IV were considered and adopted in the Energy and Commerce Committee on voice vote, a reading of the House floor debate on H.R. 3030 as well as the House floor debate on the Conference Report to S. 1630 (the final bill adopted and signed into law) yields relatively few references to this title of the 1990 Amendments or the magnitude of its requirements.

Prior to the 1990 Clean Air Act Amendments, sources were required to obtain permits only when they were initially constructed or substantially altered with a resulting significant increase in emissions. While state programs to permit air pollution sources existed prior to 1990, Title V created, for the first time, a federally-enforceable document which consolidated all Clean Air Act requirements applicable to a source. As a result, many argue that Title V was intended to create a "transparent" administrative overlay to the current statute that would provide regulators with a listing of all applicable requirements for a source in one place.

### **Brief Regulatory History**

On July 21, 1992, EPA issued a final rule to implement the Title V operating permit program. EPA promulgated a new Part 70 of Chapter I of Title 40 of the Code of Federal Regulations. The basic elements of this rule, which specifies the criteria which states must meet in order to have an "approvable" operating permit program, are still in effect and will be discussed more fully below and in Attachment I.

The 1992 rule, however, has been challenged by various interested parties, including states, industry and environmental groups. Nearly 20 entities petitioned for judicial review of the Part 70 regulations prompting EPA to propose revisions (60 Fed. Reg. 20804).

In the nearly 3 years since the final rule, EPA has also made several attempts to conduct "stakeholder" meetings aimed at revising the original rule and making the operating permits program more flexible and workable. These efforts are ongoing.

In August 29, 1994, EPA published a proposed rule affecting interim approval of state operating permits programs.

(Note: Due to the stringent deadlines established in the 1990 Amendments and other factors, interim approval by EPA of a state program is necessary for a state to avoid Clean Air Act sanctions for failure to have a federally approved program by the specified deadline. Under the 1990 Clean Air Act Amendments, operating permit programs were to have been submitted to EPA for all states and territories by November, 1993. EPA then was required to approve or disapprove all state programs by November 1994. Under Section 502(g) of the CAA, however, the Administrator has authority to grant "interim approval" for a period of two years. This authority was utilized in the August 29th proposed rule. Presently, a number of states and localities have received interim approvals from EPA although not all areas have received such approval on the basis of the August 29th proposed rule. See Attachment II for a list of state and local operating permit submittals).

This rule allowed for interim federal approval for state programs that allowed certain permit changes to be incorporated into a permit through minor permit modification procedures which did not include an opportunity for public participation. Within this proposed rule, however, EPA stated that the "better interpretation" was that such changes were not minor changes and that the purpose of the proposal was to allow states time to correct such deficiencies.

Additionally, EPA published another rule on August 29th which set out a four-track system for the revision of issued permits. Broadly, permits could be revised administratively, under de minimis provisions, as a minor permit revision or as a significant permit revision. (Since this proposed rule represents a complex revision of the original Part 70 regulations, Attachment V is provided to outline the basic elements of this proposal. The lack of discussion on this rule at this point should be interpreted only as an indication of the complexity of the proposed rule and not on its relative importance).

Following this new revision effort, the four track system was heavily criticized as too complicated, prescriptive and disruptive to existing state programs. Thus, on January 26, 1995, EPA Assistant Administrator Mary Nichols announced that EPA would scrap the present permit modification rule and begin working on another proposal.

The ability of a source to alter operations under a permit remains contentious since permit

revisions affect the ability of a source to unilaterally change operations (affecting air emissions) in response to the marketplace or other conditions. Industry has argued that restrictive permit revision rules, which may require significant administrative review periods and public notice and comment, will hamper the ability of affected industries to compete both domestically and internationally.

In this regard, EPA has circulated a April 10, 1995, predecisional draft outlining streamlined procedures for revising operating permits and proposing to exempt certain non-major research and development facilities from Title I and Title V of the Clean Air Act. (Title I provisions include National Ambient Air Quality Standards, State Implementation Plans, and hazardous air pollutants.)

Additionally, on April 27, 1995, EPA issued a proposed rule (Part 71) which specifies requirements of the federal operating permits program. While state and local governments along with Tribal air agencies are contemplated to be the prime enforcement agencies of Title V, the 1990 Amendments provide that EPA may assume responsibility for administration of an operating permits program where a state, local or Tribal agency has not developed, administered or enforced an "acceptable" program. (Section 502(d)(3) and 502(i)(4)). The April 27, 1995, proposed rule details the federal program, including its requirements and application to affected sources.

#### **Administrative/Paperwork Burdens**

Many critics charge that Title V creates an administratively complex and costly program to document Clean Air Act requirements which affect individual sources across the country. Affected sources must not only understand the CAA requirements that impact their day-to-day operations but must comply with the intricate administrative procedures, public review provisions and the possibility of litigation inherent in the process established by Part 70 regulations.

EPA has estimated that, under Title V, 34,324 major sources nationwide will be required to obtain operating permits. Normally, these permits will be issued by the state or local permitting authority.

As detailed more fully in the section immediately below, applications for operating permits are complex documents which often require expert assistance in preparation. State programs often require that a source must conduct a comprehensive inventory and assessment of all operations occurring on site. Additionally, considerable legal liability attaches to the statements and data included within a Title V permit.

While the size and complexity of the permits vary considerably, it is notable that a permitting authority must include "alternative operating scenarios" requested by the source in a permit. Such scenarios are intended to address the situation where different CAA standards or limitations may be applicable to a source depending on the type of operations conducted by the source (e.g., different standards could apply to different fuels being used in the same industrial boiler).

In this instance, when a source shifts among different operating scenarios, the owner or operator who is subject to Title V must record the change in a log, kept on site and available to inspectors. More importantly, though, in preparing an initial Title V permit application, an affected source may be faced with the prospect of estimating the range and scope of possible operations on site for up to five years in the future (i.e., the maximum term of a permit) as well as the applicable CAA requirements for such operations. Although the source may benefit from alternative scenarios presented in a permit, the complexity of planning required for a permit application is thus considerably increased.

Additionally, under Section 505(a) of the CAA, EPA is required not only to review the state or local program which will issue a permit for each source, but each permitting authority must transmit a copy of each permit application to EPA as well as any application for a permit renewal or modification. EPA is then required to object to any provision which is not in compliance with the "applicable requirements" of the Clean Air Act.



This provision of Title V is known as the EPA "veto." For a source subject to Title V, the veto raises the prospect that a permit application or revisions to a permit may be subject not only to public notice and hearings (a minimum of 30 days) but further delay due to the EPA review period (45 days) plus the possibility of a public petition to request EPA to object to a permit application or revision (60 days following the end of the 45 day veto period).

### **Program Costs**

In 1992, EPA estimated the cost of the program at \$526 million per year, with the major burden (\$512 million) falling on affected sources. Some industry experience to date has suggested that costs for permit requirements may be higher, perhaps approaching \$1,000,000, for many large sources (of which there are an estimated 9,160).

Whatever costs ultimately are borne by industry and affected sources under Title V, it is notable that the 1992 EPA estimate of program costs was unable to estimate the precise economic benefits of the program. While EPA listed several "qualitative benefits," it explicitly stated that "we cannot determine whether the benefits exceed the costs." (Regulatory Impact Analysis and Regulatory Flexibility Act Screening for Operating Permits Regulations, U.S. EPA, June 1992, pg. 34).

### **The Permit Application Process of Title V in Brief**

As indicated above by the discussion of regulatory action affecting Title V, the new system of operating permits is complex and interrelated to an understanding of the 1990 Clean Air Amendments as well as previous federal law. Thus, it is difficult to present an encapsulated version of its requirements.

Since Title V is also undergoing continuing revision, any static "picture" of Title V permitting may be subject to change. However, the basic requirements of Title V as they relate to an individual source are as follows:

**Affected Sources:** Sources which must apply for a federal operating permit under Title V include all "major sources" as defined in the Clean Air Act. These are sources which emit over 100 tons of any air pollutant (or lesser amounts of criteria air pollutants in certain nonattainment areas); sources which emit any combination of 25 tons or more per year of Hazardous Air Pollutants (HAPs) listed under Section 112(b) of the CAA; and sources which emit any single HAP in amounts greater than 10 tons per year.

In addition, certain non-major sources must also obtain operating permits. These include non-major sources subject to new source performance standards and national emission standards for HAPs under Section 112 or sources subject to emission limitations under the acid rain program (Title IV of the Clean Air Act).

Furthermore, it should be noted that under existing Part 70 regulations, states can provide for deferral of non-major sources subject to the permit program pending further EPA rulemaking. These sources are those subject to the new source performance standards of Section 111 of the CAA and provisions regarding HAPs under Section 112. EPA has stated it will initiate rulemaking for such sources within 5 years of the date EPA approves a program which defers such sources.

**Number of Permits:** In general, a source may obtain a permit for a single "facility" or individual permits for individual sources of a facility which contains multiple sources. In addition, general permits are contemplated which would apply to many similar sources (although sources covered by a general permit are still required to comply with all Title V requirements).

**Elements of a Permit Application:** Many individual requirements of an "approvable" permit were established in Title V and Part 70.5. At minimum, however, a source applying for a permit (and a EPA-approved permitting program) must contain the following elements:

- \* Background information. Identification of the source, with address, telephone number, names of the owner(s), and a person to contact at the site plus a description of operations by SIC code for each of the sources products and processes
- \* All applicable Clean Air Act requirements. For each regulated pollutant, the application must identify all emission points and emission rates in sufficient detail to establish a basis for applicable fees. Additionally, information must be included regarding the emission rates in tons/year, and separately on fuels, fuels use, raw materials, production rates and operating schedules of the source to the extent necessary to determine and regulate emissions.
- \* Sources must also supply and the application must contain a description of all air pollution control equipment and monitoring devices or activities, any limitations on source operations that affect emissions and any work practice standards for regulated air pollutants, as well as any information required by other federal air pollution control requirements and the calculations on which the emissions information is based.
- \* All federal air pollution control requirements for the source, including a description of or reference to any applicable test method for determining compliance, and any "other specific information that may be necessary to implement and enforce other applicable requirements of the Act . . ." (Part 70.5 (c)(5))
- \* Identification of federally-enforceable terms and state terms which are not federally-enforceable but applicable to a source within a particular state.
- \* Length of permit (no more than 5 years).
- \* Monitoring, recordkeeping and reporting requirements which are applicable to the source.
- \* Schedule for submitting compliance certifications and compliance certifications signed by a responsible official as well as the method used to determine compliance status, and a schedule for submission of certified progress reports (no less frequently than every 6 months).
- \* Alternative operating scenarios for the affected source.
- \* Certification of compliance with applicable requirements.

Once a permit is submitted to the permitting authority (generally a state or local entity which has been previously approved by EPA), the application must be acted upon within 18 months. At the start of an approved operating permit program, 3 years are allowed for the initial processing of applications, with the permitting authority required to act upon one-third of the expected applicants each year. An overview of the procedures for issuance of a permit is contained in Attachment III.

Permit revisions and permit renewals carry with them a number of additional administrative and economic burdens. Since these provisions are presently subject to EPA rulemaking, however, a brief overview of this process is provided in Attachment IV with the understanding that present requirements may be subject to considerable change through new and pending rulemakings. The relative importance of the ability to revise an issued permit expeditiously, however, cannot be understated.

## Current Issues

To date, EPA has approved operating permit programs in 11 states and 10 localities (the State of Virginia's Operating Permit program was disapproved in June 1994, and four local programs have been disapproved). Approximately 35 state programs are pending approval by EPA and about 30 local programs are pending. EPA has stated that most of these programs "are expected to be approved this year."

EPA is also circulating the draft rule on operating permit revisions noted above. EPA has indicated that this proposal will create a two-track system for permit revisions, provide states "greater flexibility" on the amount of public and EPA review afforded permit revisions, and establish a clear de minimis revision process which does not require any further public review.

EPA indicates, however, that "on actions that have a significant environmental effect, the public would be provided a 30-day opportunity to review and comment on the revision (and that) EPA would also have an opportunity to object to these actions, as allowed under the law." (EPA Congressional Liaison, Clean Air Act Briefing Package, April, 1995).

Thus, despite these efforts, several continuing issues have been raised with respect to the history and content of the present program.

### (1) The regulatory burden of Title V.

Many interested stakeholders have argued that the Title V Permit Program creates an inordinate burden on states and affected sources without an associated environmental benefit. In essence, this argument cites the cost of Title V requirements against the fact that, as essentially an administrative and enforcement tool, the title does not directly produce substantive gains in environmental quality.

In this view, Title V creates a mass of paperwork, necessitates the widespread employment of lawyers and environmental consultants, establishes increased bureaucracy at the state and local level, and promotes a complicated process in which sources and states labor under the threat of Clean Air Act sanctions, civil fines and criminal liability. This argument cites the billions of dollars that will be spent to comply with Title V and questions whether the resulting benefit -- the intricate system of state and local permits overseen by EPA -- is worth the expenditure of such large economic resources.

Proponents of Title V are likely to cite the role of Title V as a consolidation of federal Clean Air Act requirements in one document, an inferred increase in source "accountability," the production of standardized source data, and an improved use of enforcement resources as justification for the existence of the program. In addition, proponents argue that, to some extent, the creation of incentives for source compliance under Title V is also beneficial. In this perspective, the threat of direct Clean Air Act sanctions, the public disclosure of permit terms, the public review process and the ability of individuals to judicially challenge the issuance of a permit either increase compliance or promote other societal benefits.

### (2) The Federal/State/Local Relationship in Clean Air Act compliance and enforcement.

Critics of EPA Title V regulations argue that the Agency did not build off of successful, preexisting state programs, but engaged in overly prescriptive rulemaking. The July 1992 rule is cited as an example of excess; it is argued that the rule prescribed inflexible requirements that in many cases were inconsistent with effective state programs, necessitating revisions at the state and local level.



It is argued that the intent of Congress in establishing Title V was only to compile the relevant CAA requirements which are applicable to a source -- and not to impose additional burdens on a source. Thus, the specificity of Part 70 is challenged on the basis that regulators far exceeded the intent of Title V, creating essentially new requirements outside the scope of federal emission standards and limitations.

Opponents of this view would most likely insist on the relevance and necessity of most information required under Part 70. In essence, this view of Title V cites the difficulty in enforcing the standards and limitations of the CAA without site and source specific information.

Given that air emissions are difficult to assess from a distance "outside the factory gate," this perspective argues that detailed emission data, enforced through a standardized format, is the most direct method to assure compliance. Additionally, since long range transport of pollutants can occur, it is also alleged that differing state and local permitting requirements would inhibit broader air quality goals.

### **(3) Title V Uncertainty:**

Reference in the preceding sections was made to the various application and operating permit review times established in Title V. Without delving into great detail, states and affected sources complain that the legislative timeframes established by the 1990 Amendments now present significant problems which are only compounded by ongoing revisions to the program.

In essence, nearly all states have submitted operating permit programs to EPA under the existing Part 70 regulations. As previously noted, 11 states have received full EPA approval.

However, efforts are ongoing to alter the permit revision process and other aspects of Title V. Therefore, uncertainty has arisen as to the effect of these changes on states and localities with approved programs and the effect on states and localities with submitted but unapproved programs.

Given that many provisions of a state program may be subject to state legislative review and action, significant timing problems may occur in attempting to revise presently approved or submitted plans to take advantage of increased "flexibility" in any revised rules and EPA guidance on Title V. Additionally, there is at least the prospect that approved states may operate under "old" Part 70 rules while other states operate under revised regulations. Thus, dissimilar Title V treatment for similar sources may be a possible result of the effort to revise present regulations.

## ATTACHMENT I

### TIMELINE OF THE FEDERAL CAA OPERATING PERMIT PROGRAM

| DATE                                                                                       | REQUIREMENT                                                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NOVEMBER 1990                                                                              | CAAA of 1990 Enacted into Law.                                                                                                                                                                                                                                                                                                                                                                  |
| MAY 1991                                                                                   | EPA Proposes FPR – CAA § 502(b) required EPA to issue regulations establishing the minimum elements for State Operating Permit Programs by November 1991. EPA published its Proposed Rule for public comment in May 1991. [56 Fed. Reg. 21712 (1991).]                                                                                                                                          |
| NOVEMBER 1991                                                                              | Deadline for EPA to Promulgate FPR.                                                                                                                                                                                                                                                                                                                                                             |
| JULY 1992                                                                                  | EPA Promulgates FPR – EPA issued the FPR on July 21, 1992. State programs that do not meet the requirements of the FPR will not be approved by EPA. [57 Fed. Reg. 32250 (1992).] EPA has issued followup guidance documents to explain certain aspects of the FPR. Several lawsuits have been filed challenging the FPR and some of the guidance issued by the Agency.                          |
| NOVEMBER 1993                                                                              | Deadline for States to Submit Proposed Programs to EPA for Approval – States must submit their permit programs for approval, including all legislative and regulatory components, and a description of how the program will be administered.                                                                                                                                                    |
| NOVEMBER 1994<br>(or 1 Year from the Date State<br>Submits Program to EPA for<br>Approval) | Deadline for EPA to Approve or Disapprove State Programs Submitted by the November 1993 Deadline – EPA has up to one year after a State submits a program to approve or disapprove the program. If EPA disapproves and the State does not correct the errors in a timely manner, EPA must administer the Federal Permit Program (FPP) in the State. The FPP is currently being prepared by EPA. |
| NOVEMBER 1995<br>(or 1 Year from the Date EPA<br>Approves a State Program)                 | Deadline for Owners and Operators to Submit Permit Applications if State Program Is Approved – All sources of air emissions subject to a State program must submit permit applications to the permitting authority within one year of EPA's approval of the State program. State programs may require early submittal of permit applications.                                                   |
| NOVEMBER 1994 to<br>NOVEMBER 1997<br>(or During the 3 Years Following<br>Program Approval) | Three-Year Phased Permit Issuance Program – States must issue permits over the three years following permit program approval, acting on one-third of expected applications each year. Therefore, by November 1997, most sources subject to Title V in States with approved programs will hold operating permits.                                                                                |

SOURCE: The Clean Air Act Operating Permits Program, A handbook for Counsel, Environmental Managers, and Plant managers; Charles H. Mnauss, Shannon S. Broome and Michael E. Ward; American Bar Association, 1993

## OVERVIEW OF THE CLEAN AIR ACT OPERATING PERMIT PROGRAM

|                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>WHAT IS THE OPERATING PERMIT PROGRAM?</b>                                | Title V of the Clean Air Act Amendments of 1990 (CAA or CAAA) and the Federal Permit Rule (FPR) require States to submit a proposed program to EPA by November 1993 for issuing permits to certain significant sources of air emissions. EPA must approve a State program within 1 year after submittal. Within 1 year after EPA approval, sources subject to the program in a State will not be able to operate without a permit or a complete, pending application. If a State program does not obtain EPA approval, EPA must implement a Federal permit program in the State.                                                                                                                                                                                                                                                              |
| <b>WHO MUST OBTAIN A PERMIT?</b>                                            | "Major sources," as defined by the Federal CAA, sources subject to certain other Federal CAA limitations, and other sources that EPA may designate.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>WHO WILL ISSUE THE PERMIT?</b>                                           | The permitting authority will issue the permit after allowing for public, "affected State," and EPA review. The State cannot issue the permit if EPA objects in a timely manner.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>WHAT WILL THE PERMIT CONTAIN?</b>                                        | The permit must include all Federal CAA requirements that apply to the source and can include, according to the State program, "State only" requirements. In addition, the permit will contain a schedule of compliance, which must include enforceable milestones for achieving compliance if the source is not in compliance with any Federal CAA requirements. The permit will also include the mechanisms for certifying compliance (e.g., monitoring, recordkeeping, and reporting requirements).                                                                                                                                                                                                                                                                                                                                        |
| <b>WILL THE PERMIT RESTRICT THE MANNER IN WHICH THE SOURCE IS OPERATED?</b> | Few limitations are placed on activities that are consistent with or are not addressed by the permit. In addition to this "built-in" or inherent flexibility, the permit or State program may also include mechanisms to define the full scope of operational flexibility allowed such as anticipated alternative operating scenarios, emissions averaging under a Federal standard, equivalent SIP limitations, emissions trading to meet SIP limitations, and other changes that would contravene a permit term but not otherwise violate applicable Federal CAA requirements.                                                                                                                                                                                                                                                              |
| <b>CAN THE PERMIT BE CHANGED?</b>                                           | States must establish procedures for expeditiously processing requests for permit revisions. The FPR suggests different procedures for administrative amendments, minor modifications, and significant modifications. EPA or the permitting authority can reopen permits for cause, and changes may be made when the permit is renewed (at least every five years).                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>HOW WILL THE PERMIT BE ENFORCED?</b>                                     | State programs must provide criminal and civil penalties and injunctive authority for violation of permit terms or for failing to hold a permit. If the permitting authority does not issue a permit by the deadline set in the State program, sources that have submitted timely and complete applications will be able to continue to operate after the deadline under the "application shield." In addition, permits may contain a "permit shield" by including a statement in the permit that compliance with the terms of the permit is deemed compliance with the Federal CAA. Even though the permit shield would prevent EPA or the State from bringing an enforcement action for violating the CAA if the permit contains an error as to a Federal CAA requirement, the permit would still need to be reopened to correct the error. |
| <b>WHO WILL PAY FOR THE PERMIT PROGRAM?</b>                                 | The State program must provide for collection of fees to cover the cost of the permit program. The State program cannot collect fees beyond what is needed to cover permit program costs unless there is separate legal authority to do so. States must demonstrate that all fees collected have been used solely to cover Title V permit program costs.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>HOW CAN INDUSTRY ENSURE A WORKABLE PROGRAM AND A FLEXIBLE PERMIT?</b>    | Industry should participate in development of State programs and EPA model permits to ensure that they comply with the CAA and FPR, provide maximum operational flexibility, and contain fair fee structures. Individual sources should begin collecting information relevant to their permit applications and plan permit strategies to allow maximum operational flexibility.                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## ATTACHMENT II

## OPERATING PERMITS PROGRAMS

| AGENCY | DATE OF<br>COMPLETE<br>(INCOMPLETE)<br>SUBMITTAL | PROPOSED<br>ACTION<br>PUBLISHED IN<br>FEDERAL<br>REGISTER | FINAL ACTION<br>PUBLISHED IN<br>FEDERAL<br>REGISTER |
|--------|--------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------|
|--------|--------------------------------------------------|-----------------------------------------------------------|-----------------------------------------------------|

## REGION I

|               |   |  |  |
|---------------|---|--|--|
| Connecticut   | - |  |  |
| Maine         | - |  |  |
| Massachusetts | - |  |  |
| New Hampshire | - |  |  |
| Rhode Island  | - |  |  |
| Vermont       | - |  |  |

## REGION II

|                |                      |  |  |
|----------------|----------------------|--|--|
| New Jersey     | (11/15/93)           |  |  |
| New York       | (11/15/93)           |  |  |
| Puerto Rico    | 4/11/94 <sup>1</sup> |  |  |
| Virgin Islands | (11/15/93)           |  |  |

## REGION III

|                         |            |                                               |                                       |
|-------------------------|------------|-----------------------------------------------|---------------------------------------|
| Delaware                | (11/19/93) |                                               |                                       |
| District of<br>Columbia | 1/14/94    | 3/21/95<br>60 FR 14921<br>Interim<br>Approval |                                       |
| Maryland                | -          |                                               |                                       |
| Pennsylvania            | (11/15/93) |                                               |                                       |
| Allegheny<br>County     | -          |                                               |                                       |
| Philadelphia            | -          |                                               |                                       |
| Virginia                | 11/19/93   | 6/17/94<br>59 FR 31183<br>Disapproval         | 12/5/94<br>59 FR 62324<br>Disapproval |
| West Virginia           | 11/16/93   |                                               |                                       |

## REGION IV

|                       |          |  |  |
|-----------------------|----------|--|--|
| Alabama               | 12/15/93 |  |  |
| City of<br>Huntsville | 12/15/93 |  |  |
| Jefferson             | 12/15/93 |  |  |

|                             |                      |                                            |                                             |
|-----------------------------|----------------------|--------------------------------------------|---------------------------------------------|
| Florida                     | 11/16/93             |                                            |                                             |
| Georgia                     | 11/12/93             |                                            |                                             |
| Kentucky                    | 1/18/94              |                                            |                                             |
| Louisville-Jefferson County | 2/1/94               |                                            |                                             |
| Mississippi                 | 11/15/93             | 10/3/94<br>59 FR 50214<br>Full<br>Approval | 12/28/94<br>59 FR 66737<br>Full<br>Approval |
| North Carolina              | 3/11/94 <sup>1</sup> |                                            |                                             |
| Forsyth County              | 6/1/94 <sup>1</sup>  |                                            |                                             |
| Mecklenburg County          | 11/12/93             |                                            |                                             |
| Western NC                  | 3/11/94 <sup>1</sup> |                                            |                                             |
| South Carolina              | 11/16/93             | 1/24/95<br>60 FR 4583<br>Full<br>Approval  |                                             |
| Tennessee                   | 11/10/94             |                                            |                                             |
| Davidson County             | 4/19/94 <sup>1</sup> |                                            |                                             |
| Hamilton County             | 11/10/94             |                                            |                                             |
| Knox County                 | 7/11/94 <sup>1</sup> |                                            |                                             |
| Shelby County               | -                    |                                            |                                             |

## REGION V

|           |                      |                                                |                                              |
|-----------|----------------------|------------------------------------------------|----------------------------------------------|
| Illinois  | 11/15/93             | 9/30/94<br>59 FR 49882<br>Interim<br>Approval  | 3/7/95<br>60 FR 12478<br>Interim<br>Approval |
| Indiana   | 8/10/94 <sup>1</sup> |                                                |                                              |
| Michigan  |                      |                                                |                                              |
| Minnesota | 11/15/93             | 9/13/94<br>59 FR 46948<br>Interim<br>Approval  |                                              |
| Ohio      | 7/22/94 <sup>1</sup> |                                                |                                              |
| Wisconsin | 1/27/94              | 10/19/94<br>59 FR 52743<br>Interim<br>Approval | 3/6/95<br>60 FR 12128<br>Interim<br>Approval |

## REGION VI

|                          |          |                                                           |                                                           |
|--------------------------|----------|-----------------------------------------------------------|-----------------------------------------------------------|
| Arkansas                 | 11/15/93 | 9/19/94<br>59 FR 47828<br>Interim<br>Approval             |                                                           |
| Louisiana                | 11/15/93 | 8/25/94<br>59 FR 43797<br>Interim<br>Approval             |                                                           |
| New Mexico               | 11/15/93 | 5/19/94<br>59 FR 26158<br>Interim<br>Approval             | 11/18/94<br>59 FR 59656<br>Interim<br>Approval            |
| Albuquerque <sup>1</sup> | 4/4/94   | 1/10/95 <sup>1</sup><br>60 FR 2570<br>Interim<br>Approval | 1/10/95 <sup>1</sup><br>60 FR 2527<br>Interim<br>Approval |
| Oklahoma                 | 1/12/94  | 3/10/95<br>60 FR 13088<br>Interim<br>Approval             |                                                           |
| Texas                    | 11/15/93 |                                                           |                                                           |

## REGION VII

|                                 |                      |                                              |  |
|---------------------------------|----------------------|----------------------------------------------|--|
| Iowa                            | 3/16/94 <sup>1</sup> |                                              |  |
| Kansas                          | 12/12/94             |                                              |  |
| Missouri                        | 1/13/95              |                                              |  |
| Nebraska                        | 1/13/94              | 3/7/95<br>60 FR 12521<br>Interim<br>Approval |  |
| Lincoln-<br>Lancaster<br>County | 1/13/94              | 1/31/95<br>60 FR 5883<br>Interim<br>Approval |  |
| Omaha-<br>Douglas<br>County     | 1/13/94              | 3/7/95<br>60 FR 12521<br>Interim<br>Approval |  |

## REGION VIII

|              |          |                                                |                                              |
|--------------|----------|------------------------------------------------|----------------------------------------------|
| Colorado     | 11/05/93 | 10/14/94<br>59 FR 52123<br>Interim<br>Approval | 1/24/95<br>60 FR 4563<br>Interim<br>Approval |
| Montana      | 4/6/94   | 2/14/95<br>60 FR 8335<br>Interim<br>Approval   |                                              |
| North Dakota | 5/11/94  |                                                |                                              |
| South Dakota | 1/11/94  | 1/12/95<br>60 FR 2917<br>Interim               | 3/22/95<br>60 FR 15066<br>Interim            |



|         |          |                                               |                                              |
|---------|----------|-----------------------------------------------|----------------------------------------------|
| Utah    | 4/15/94  | 3/22/95<br>60 FR 15105<br>Full<br>Approval    |                                              |
| Wyoming | 11/22/93 | 9/23/94<br>59 FR 48845<br>Interim<br>Approval | 1/19/95<br>60 FR 3766<br>Interim<br>Approval |

## REGION IX

|                            |                     |                                               |  |
|----------------------------|---------------------|-----------------------------------------------|--|
| Arizona                    | 11/16/93            |                                               |  |
| Pinal-Gila<br>Counties     | 11/15/93            |                                               |  |
| Maricopa<br>County         | 11/16/93            |                                               |  |
| Pima<br>County             | 11/15/93            |                                               |  |
| California                 | -                   |                                               |  |
| Modoc<br>County            | 12/27/93            | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Placer<br>County           | 12/27/93            | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Kern<br>County             | 11/16/93            | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Great<br>Basin<br>Unified  | 1/12/94             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Colusa<br>County           | 2/24/94             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| South<br>Coast             | 3/6/95 <sup>1</sup> |                                               |  |
| Butte<br>County            | 12/16/93            | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Imperial<br>County         | 3/24/94             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval |  |
| Santa<br>Barbara<br>County | 11/16/93            |                                               |  |

|                              |                      |                                                                |
|------------------------------|----------------------|----------------------------------------------------------------|
| Northern<br>Sierra           | 6/6/94               | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |
| Lake<br>County               | 3/15/94 <sup>1</sup> | 11/29/94<br>59 FR 60931<br>Disapproval/<br>Interim<br>Approval |
| Lassen<br>County             | 1/12/94              | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |
| Amador<br>County             | 10/14/94             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |
| Mariposa<br>County           | 3/29/95 <sup>2</sup> |                                                                |
| Monterey<br>Bay<br>Unified   | 12/06/93             |                                                                |
| El Dorado<br>County          | 11/16/93             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |
| Tehama<br>County             | 12/06/93             | 11/29/94<br>59 FR 60931<br>Disapproval/<br>Interim<br>Approval |
| Shasta<br>County             | 11/16/93             | 11/29/94<br>59 FR 60931<br>Disapproval/<br>Interim<br>Approval |
| Sacramento<br>Metropolitan   | 8/1/94               |                                                                |
| Calaveras<br>County          | 10/31/94             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |
| San Diego<br>County          | 4/22/94              |                                                                |
| Bay Area                     | 11/16/93             | 11/29/94<br>59 FR 60939<br>Interim<br>Approval                 |
| San Luis<br>Obispo<br>County | 11/16/93             |                                                                |
| Tuolumne<br>County           | 11/16/93             | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |

|                                 |                       |                                                                |                                               |
|---------------------------------|-----------------------|----------------------------------------------------------------|-----------------------------------------------|
| San<br>Joaquin<br>Unified       | 4/8/94                |                                                                |                                               |
| Mendocino<br>County             | 12/27/93              | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| Ventura<br>County               | 12/06/93              | 11/22/94<br>59 FR 60104<br>Interim<br>Approval                 |                                               |
| Mojave<br>Desert                | 3/10/95 <sup>2</sup>  |                                                                |                                               |
| Glenn<br>County                 | 12/27/93              | 11/29/94<br>59 FR 60931<br>Disapproval/<br>Interim<br>Approval |                                               |
| Yolo-<br>Solano                 | 11/1/94               | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| Siskiyou<br>County              | 12/06/93              | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| Feather<br>River<br>County      | 12/27/93              | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| North<br>Coast<br>Unified       | 2/24/94               | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| Northern<br>Sonoma<br>County    | 1/12/94               | 12/8/94<br>59 FR 63289<br>Interim<br>Approval                  |                                               |
| Hawaii                          | 12/20/93              | 7/26/94<br>59 FR 37957<br>Interim<br>Approval                  | 12/1/94<br>59 FR 61549<br>Interim<br>Approval |
| Nevada                          | 11/22/93              |                                                                |                                               |
| Washoe<br>County                | 11/18/93              | 8/24/94<br>59 FR 43523<br>Interim<br>Approval                  | 1/5/95<br>60 FR 1741<br>Interim<br>Approval   |
| Clark<br>County                 | 1/20/94               |                                                                |                                               |
| American Samoa                  | 11/18/94 <sup>4</sup> |                                                                |                                               |
| Northern<br>Marianas<br>Islands | 8/10/94 <sup>4</sup>  |                                                                |                                               |

Guam 11/18/94\*

# REGION X

|                                                   |                      |                                               |                                               |
|---------------------------------------------------|----------------------|-----------------------------------------------|-----------------------------------------------|
| Idaho                                             | 1/20/95 <sup>2</sup> |                                               |                                               |
| Oregon                                            | 11/15/93             | 9/14/94<br>59 FR 47105<br>Interim<br>Approval | 12/2/94<br>59 FR 61820<br>Interim<br>Approval |
| Lane<br>Regional                                  | 11/15/93             | 9/14/94<br>59 FR 47105<br>Interim<br>Approval | 12/2/94<br>59 FR 61820<br>Interim<br>Approval |
| Washington                                        | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Washington-<br>Energy Facility<br>Site Evaluation | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim             | 11/9/94<br>59 FR 55813<br>Interim             |
| Council                                           |                      | Approval                                      | Approval                                      |
| Benton-<br>Franklin<br>County                     | 11/01/93             | 8/18/94<br>59 FR 42552<br>Disapproval         | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Northwest                                         | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Olympic                                           | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Puget<br>Sound                                    | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Spokane<br>County                                 | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Southwest                                         | 11/01/93             | 8/18/94<br>59 FR 42552<br>Interim<br>Approval | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |
| Yakima<br>County                                  | 11/01/93             | 8/18/94<br>59 FR 42552<br>Disapproval         | 11/9/94<br>59 FR 55813<br>Interim<br>Approval |

<sup>1</sup>Program resubmitted after "incomplete" determination.

<sup>2</sup>Program submitted-No completeness determination

<sup>3</sup>Published as a direct final rulemaking in the Federal Register

<sup>4</sup>Section 325 petition submitted by governor requesting exemption from title V requirements.

ATTACHMENT III

### OVERVIEW OF FPR PROCEDURES FOR PERMIT ISSUANCE

| REQUIREMENT                                                                                              | DESCRIPTION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PLANNING</b>                                                                                          | State programs are required to process applications expeditiously. The FPR allows 18 months after receiving a complete application to process it, except during program startup when the permitting authority must issue or deny one-third of permit applications annually over the 3 years after program approval.                                                                                                                                                                                                                                                                                                                      |
| <b>PUBLIC NOTICE AND COMMENT</b>                                                                         | Notice of the draft permit must be provided by local newspaper and to a list of interested persons maintained by the permitting authority. Issuance of public notice begins a required 30-day comment period. State programs must provide an opportunity for a hearing if germane comments are raised (i.e., that relate to whether the draft permit accurately records all applicable Federal CAA requirements).                                                                                                                                                                                                                        |
| <b>AFFECTED STATE REVIEW</b>                                                                             | Adjacent States whose air quality may be affected by or States that are located within 50 miles of the source ("affected States") must also be notified of the draft permit. If the permitting authority rejects an affected State's recommendations for changes to the draft permit, the permitting authority must explain its decision to EPA and the affected State when it submits the proposed permit to EPA. The permitting authority need not accept any affected State recommendations not based on applicable Federal CAA requirements.                                                                                         |
| <b>EPA REVIEW AND VETO</b>                                                                               | EPA must receive a copy of the application and the proposed and final permits. After public comment and affected State review on the draft permit, the permitting authority must send the proposed permit to EPA for a 45-day review period. If EPA determines that the proposed permit does not accurately reflect Federal CAA requirements applicable to the source, it will object to its issuance. If EPA objects to a permit within the 45-day period, the State cannot issue it. If the State does not submit a revised proposed permit meeting the objection, EPA will issue or deny the permit under the Federal permit program. |
| <b>ISSUANCE OF THE PERMIT BY THE PERMITTING AUTHORITY OR BY DEFAULT IF PROVIDED IN THE STATE PROGRAM</b> | The permitting authority may issue the permit after public, affected State, and EPA review is complete, provided that EPA has not objected to the permit's issuance. Importantly, the State program may provide that permits will issue by default after the 45-day EPA review period expires if EPA has not objected.                                                                                                                                                                                                                                                                                                                   |
| <b>PUBLIC PETITIONS REQUESTING EPA TO OBJECT TO A PERMIT</b>                                             | For 60 days after the end of the 45-day EPA review period, any person may petition EPA to object to the permit. Petitions cannot raise new issues (unless it was impracticable to raise the issue during the public comment period). If EPA decides to object in response to a petition and the permit has been issued, the permit remains in effect until it is reopened and revised. If EPA rejects a petition, the petitioner may seek judicial review of EPA's refusal to object to the permit.                                                                                                                                      |
| <b>OPPORTUNITY FOR JUDICIAL REVIEW</b>                                                                   | The permit applicant, any person who participated in the public participation process, and any other person allowed judicial review under State law can challenge the issuance or denial of a permit in State court based on grounds raised during the comment period (or on other grounds if it was impracticable to raise them during the comment period). In addition, if the permitting authority does not act on the application within 18 months of the completeness determination (or 3 years after program approval for the initial set of applications), the applicant (or the public) can sue to force action on the permit.   |

SOURCE: Knauss, Broome and Ward, noted in Attachment I

# DETAILED SUMMARY OF FPR OPERATIONAL FLEXIBILITY AND PERMIT PROVISIONS

| OPERATIONAL FLEXIBILITY<br>(8 CATEGORIES) | ACTIVITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | NOTICE AND/OR<br>RECORDKEEPING<br>REQUIREMENTS                                                                                                                            | WAITING TIME<br>AFTER NOTICE       | EXAMPLES                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                           | <p><b>"built-in" (or inherent) Flexibility:</b> This category includes activities that are not related to the CAA or that are otherwise consistent with the permit because they are below permit limitations or do not alter or affect Federal CAA requirements, including those covered by a "worst case scenario." This category offers the greatest flexibility because no notice or recordkeeping procedures are required.<br/>[57 Fed. Reg. 32267 (col. 2), 32269 (col. 1).]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | None                                                                                                                                                                      | N/A. No notice is required         | <ol style="list-style-type: none"> <li>1. Installing a new copy machine.</li> <li>2. Physically moving equipment where the move does not change or affect Federal CAA requirements or other Federally-enforceable permit terms</li> <li>3. Switching paint colors at a painting facility with a permit that limits the VOC content of its paints, as long as the new color complies with the VOC limit in the permit</li> <li>4. Routine repair, replacement, and maintenance activities.</li> </ol> |
|                                           | <p><b>Anticipated Alternative Operating Scenarios:</b> A source can shift from one permitted scenario to another without providing notice. This is really a special case of "built-in" flexibility, because the provisions that apply to each scenario are already built into the permit. The recordkeeping requirements for "shifting" among scenarios can be eliminated by obtaining a single, worst-case scenario that covers all or most sources. This category allows variation in plant operations where different Federal or State standards would apply to the different operations. It does not provide authority to impose new Federal operation and maintenance requirements on sources. In other words, in spite of its title, this category is best viewed as ensuring the source's ability to have a permit that contains the alternative standards that may apply, rather than alternative methods of operation.<br/>[40 C.F.R. § 70.6(b)(9).]</p> | No notice is required. The owner or operator must keep a log of the changes on-site so that an inspector can determine which operating scenario applies at any given time | N/A. No notice is required.        | <p><b>Scenario A:</b> Emission limitations that apply when boiler is burning coal.</p> <p><b>Scenario B:</b> Emission limitations that apply when boiler is burning gas. If source switches from coal to gas, it must record in a log the shift from permitted Scenario A to B.</p>                                                                                                                                                                                                                  |
|                                           | <p><b>Off-Permit Changes:</b> Changes affecting emissions that the permit does not address or forbid but that implicate a Federal CAA requirement and would generally need to be included in the permit when it is renewed.<br/>[40 C.F.R. § 70.6(b)(14).]</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Notice to the permitting authority and EPA required before or at the time the change is made. The owner or operator must keep an on-site record of all notices sent.      | None.                              | Change to emit a new pollutant that is covered by a MACT standard under CAA § 112.                                                                                                                                                                                                                                                                                                                                                                                                                   |
|                                           | Changes to Comply With Emissions Averaging in a Federal Standard<br>[40 C.F.R. § 70.6(b)(10).]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | To the extent that notice and recordkeeping are required in the applicable Federal standard                                                                               | N/A. As specified in the standards | MACT standards that allow averaging for compliance                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

SOURCE: Knauss, Broome and Ward, Noted in Attachment I



# DETAILED SUMMARY OF FPR OPERATIONAL FLEXIBILITY AND PERMIT REVISION PROVISIONS

| OPERATIONAL FLEXIBILITY (cont'd) | ACTIVITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | NOTICE AND/OR RECORDKEEPING REQUIREMENTS                                                                                                                                                               | WAITING TIME AFTER NOTICE                                      | EXAMPLES                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | Equivalent SIP Limitations Developed at Permit Issuance or in a Permit Revision: Where the SIP allows equivalent limitations, the source can request the permitting authority to establish limitations that are equivalent to but different than the limitations in the SIP. Equivalent SIP limitations could also be a permitted anticipated alternative operating scenario. [40 C.F.R. § 70.6(b)(1)(iii).]                                                                                                                                                                                | None, unless the permit identifies the equivalent SIP limitations as one of its anticipated alternative operating scenarios, in which case the recordkeeping requirements explained above must be met. | None.                                                          | Source has 2 coating lines, each with a RACT limit. The source has anticipated the need to run one unit at a higher rate and the other at a lower rate, resulting in emissions different from that provided in the SIP but not exceeding the total rate allowed by the SIP for the two lines combined. The source can obtain equivalent SIP limitations representing adjusted emission rates (higher than the SIP limitation for line 1 and lower for line 2). |
|                                  | Emissions Trading to Meet SIP Limitations: Where the SIP allows trading, a source can make unanticipated changes to trade emissions to meet SIP standards (e.g., RACT). [40 C.F.R. § 70.4(b)(12)(i).]                                                                                                                                                                                                                                                                                                                                                                                       | Notice to the permitting authority and EPA.                                                                                                                                                            | 7 days or a longer period if required under the State program. | Source has 2 coating lines, each with a RACT limit. One coating line is not operational due to unexpected maintenance requirements. After a minimum 7-day advance notice, the source can increase emissions from the second line up to the level authorized for both units if the SIP allows the trading.                                                                                                                                                      |
|                                  | Trading Under a Voluntary Emissions Cap: The permitting authority, when a source so requests, must issue a permit that contains a Federally-enforceable emissions cap, independent of and at least as stringent as any applicable Federal CAA requirements, and which allows for trading of emissions increases and decreases among units within the source covered by the cap. If a source requests a cap, the permitting authority must include it in the permit, but the source will need to negotiate the terms for trading below the cap. [40 C.F.R. §§ 70.4(b)(12)(iii), 70.6(b)(1).] | Notice to the permitting authority and EPA.                                                                                                                                                            | 7 days or a longer period if required under the State program. | A source accepts an emissions cap to remain below the 25 tpy major source threshold for HAPs to avoid MACT standards. If the cap sets operating hour limitations for units within the source, the source could comply with the cap by "trading" (consistent with the permit's trading provisions) to exceed the operating hour limit on one unit and reduce the hours on another so long as net source emissions are below the cap.                            |

# DETAILED SUMMARY OF FPR OPERATIONAL FLEXIBILITY AND PERMIT REVISION PROVISIONS

|                                        | ACTIVITY                                                                                                                                                                                | NOTICE AND/OR<br>RECORDKEEPING<br>REQUIREMENTS                                                                                                                                                        | WAITING TIME<br>AFTER NOTICE                                                                                                                                                      | EXAMPLES                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OPERATIONAL<br>FLEXIBILITY<br>(cont'd) | Changes That Would Not Violate an Applicable Federal CAA Requirement but Would Contravene a Permit Term (i.e., would otherwise violate a permit term).<br>[40 C.F.R. § 70.4(b)(12)(i).] | Notice to the permitting authority and EPA.                                                                                                                                                           | 7 days or a longer period if required under the State program                                                                                                                     | Changing point values if the permit lists a specific value                                                                                                                                                                                                                                                                                             |
| PERMIT<br>REVISIONS                    | Administrative Amendments.<br>[40 C.F.R. § 70.7(d).]                                                                                                                                    | Notice to the permitting authority, which will then notify EPA and adjacent States whose air quality may be affected or that are located within 50 miles of the source (so-called "affected States"). | None, but notice must be given prior to or at the time the change becomes effective                                                                                               | <ol style="list-style-type: none"> <li>1. Correcting typographical errors</li> <li>2. Increasing monitoring or reporting frequency</li> <li>3. Name change, mailing address change, etc.</li> <li>4. Ownership change.</li> <li>5. Recording Title I preconstruction requirements in the permit, such as BACT and LAER, resulting from NSR.</li> </ol> |
|                                        | Minor Permit Modifications.<br>[40 C.F.R. § 70.7(e).]                                                                                                                                   | Notice to the permitting authority, which will then notify EPA and affected States                                                                                                                    | 0 to 90 days, according to the State program.                                                                                                                                     | <ol style="list-style-type: none"> <li>1. Changing from one EPA approved test method to another</li> <li>2. Changes to State-imposed requirements up to Federal limitations, such as revising a State air toxics requirement that is more stringent than MACT</li> </ol>                                                                               |
|                                        | Significant Permit Modifications.<br>[40 C.F.R. 70.7(e).]                                                                                                                               | Notice to the permitting authority, which will then notify EPA and affected States                                                                                                                    | EPA requires States to process the majority of significant modifications within 9 months. The permitting authority must act within 18 months of receiving a complete application. | Anything that cannot be processed under operational flexibility provisions, administrative amendments, or minor permit modifications, including significant changes in monitoring and changes to compliance schedules                                                                                                                                  |



### Air Pollution

#### PROPOSED CHANGE TO OPERATING PERMIT RULES WOULD CREATE 'DE MINIMIS TRACK' FOR CHANGES

A new "de minimis track" would be added to federal regulations on operating permits under the Clean Air Act and would allow certain emission changes be made before review of the permit changes is completed, according to an Environmental Protection Agency proposal published Aug. 29 (59 FR 44460).

EPA said its proposal would affect an air emissions source that wants a permit revision for changes that would have a de minimis effect on emissions. "A source could generally operate at its own risk any change at a small unit or a small change at a big unit as early as the day it submits its permit revision application," the agency said.

The sources application for a de minimis emissions change "would be required to include a proposed addendum for revising the permit to reflect the change, a demonstration and certification that the change is eligible for the de minimis change track, and an affidavit accepting the risk of operating the change before the permit is revised," EPA said.

Notice and comment would be allowed after the change is made, EPA said, and the agency would not review the changes unless petitioned to do so. Public notice would take place on a "monthly, batched basis," EPA said. "In other words," it added, "all of the de minimis changes for which the permitting authority had received applications in a given month would be listed together in a public notice issued the following month."

#### Range Of Thresholds

The agency solicited comment on the range of possible size thresholds for defining what units and what changes should be considered de minimis.

Any change at a small unit would be called a unit-based de minimis change; a small change at a big unit would be an increment-based de minimis change. For the unit-based revisions, EPA proposed a range of four possible threshold levels for criteria pollutants and three possible threshold levels for toxic pollutants.

For criteria pollutants the proposed threshold levels would be:

- 4 tons per permit term (tppt) for carbon monoxide, 1 tppt for nitrogen oxides, 1.6 tppt for sulfur dioxide, 0.6 tppt for particulate matter (PM-10), and 1 tppt for volatile organic compounds;

- 5 tons per year (tpy) for any criteria pollutant;

- The greater of 20 percent of the applicable major source threshold or 5 tpy of VOCs or NOx, or the lesser of 20 percent of the applicable major source threshold or 15 tpy of PM-10 or 0.6 tpy of lead; or

- 30 percent of the applicable major source threshold or 5 tpy, whichever is greater.

EPA said "tons per permit term" refers to a level that could not be exceeded over the remaining life of the permit, which could be up to five years.

Under the third threshold level for example, EPA said, 20 percent of a major source threshold of 100 tpy for all criteria pollutants would be 20 tpy. According to the formula, the greater of 20 tpy or 5 tpy of VOCs would apply. If the major source threshold were 10 tpy of VOC and NOx, the de minimis value would be 5 tpy of VOC or NOx, the agency said.

For toxic pollutants the three proposed threshold levels would be:

- 0 tppt;

- 20 percent of the Clean Air Act Section 112 major source threshold or 50 percent of the Section 112(g) de minimis levels, whichever is less; or

- 75 percent of the Section 112(g) de minimis levels.

#### Small Changes At Big Units

For increment-based de minimis permit revisions, EPA proposed a range of three possible threshold levels:

- 4 tppt for CO, 1 tppt for NOx, 1.6 tppt for SO<sub>2</sub>, 0.6 tppt for PM-10, or 1 tppt for VOCs;

- 20 percent of the applicable major source threshold, 10 percent of the limit applicable to the unit undergoing the change, or 15 tpy for VOC or NOx, whichever is less but not less than 2 to 5 tpy, or 15 tpy for PM-10 or 0.6 tpy for lead, whichever is less; or

- 30 percent of the applicable major source threshold or 15 percent of the limit applicable to the unit undergoing the change, whichever is less, but not less than 5 tpy for VOCs or NOx.

For toxic pollutants, the increment-based threshold levels would be:

- 0 tppt;

- 20 percent of the Section 112 major source thresholds, 50 percent of the Section 112(g) de minimis levels, or 10 percent of the limit applicable to the unit undergoing the change, whichever is less; or

- 75 percent of the Section 112 (g) de minimis levels.

The proposed changes are intended to reflect in part a settlement among about 20 groups who sued the agency in

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1992 over the July 21, 1992, final rule (*Clean Air Implementation Project v. EPA*, CA DC, No. 92-1303; 24 ER 1648).

#### Industry Sees Complications

Adding a de minimis track to the existing three tracks for permit review and public participation would complicate an already difficult and complex rule, industry lawyers told BNA.

David Novello, a Washington, D.C., attorney who represents manufacturing industries and formerly worked in EPA's Office of General Counsel, told BNA the rule was complicated before and would be even more so under the proposal.

Two significant changes in the proposal, he said, were attempts to clarify vague provisions governing operational flexibility and "off-permit" changes.

"The '92 rules are a real mishmash of what is meant by operational flexibility," Novello said. "They suggested you could contravene the terms of the permit if you didn't increase emissions as long as you gave seven days notice."

This element would be eliminated under the Aug. 29 proposal, he said.

Instead, facilities could rely on the de minimis track to cover minor plant changes.

However, Novello said, the range of de minimis levels proposed by the agency is so great that it is difficult to determine what impacts the proposal would have on industry. The higher the de minimis levels, the better for industry, he said.

But "at this time, it's not clear how useful [the de minimis track] will be," he said. Even so, he said, most of the litigants in the lawsuit leading to the proposal agreed that a de minimis track "is a good idea," but its success depends on the threshold range EPA sets in the final rule.

#### Off-Permit Changes

The other important change, he said, involved the off-permit changes. Facilities could make these changes without revising the permit because the changes are neither prohibited nor addressed in the permit rule. Generally, these include changes that are not considered modifications under any provision of Title I of the Clean Air Act, although the rule does not define Title I modification.

EPA proposed to include minor changes that are permitted under the new source review program in the definition of Title I modification and said it wants comment on that decision. Some had interpreted the final rule to exclude minor new source review changes.

Novello said that while the off-permit provisions in the 1992 rule were vague, they provided industry "a relief valve" that allowed them to make certain changes without opening the operating permit.

Under the proposal, Novello said, the scope of changes the agency would allow that could be considered off-permit is "very, very narrow," a change in the rule he considers significant.

Denise Grant, an attorney with the Chemical Manufacturers Association, told BNA the proposal offered "a very complex approach to trying to allow plants operational flexibility."

Companies, she said, need to be able to make process changes in a timely fashion in order to be competitive.

The operational flexibility provisions allow companies to envision a range of process changes, or even worst-case scenarios, over the five-year life of the permit.

"Our members are trying to determine a wide range of options that they can foresee" to include in the operating permit application, Grant said.

#### Delays May Result

Sometimes situations arise that may not have been included in the permit, Grant said, which could result in lengthy and costly delays while the company goes through the requisite permitting process to cover the change.

Theresa Larson, associate director for environmental quality at the National Association of Manufacturers, told BNA that officials at NAM could not comment at length on the proposal until they have had time to review it. But she said manufacturers continue to push for the maximum amount of flexibility to ensure the permitting process does not bring about delays that could impede companies' competitiveness.

The electronics industry, she said, is particularly concerned about the outcome of the rule because the rapid rate at which new global technologies emerge means operational changes will be even more frequent, and U.S. companies will need to be able to move with the changes to be competitive.

EPA expects to issue a final rule in 1995.

Novello predicted that "there will be quite a bit of confusion for years to come" surrounding the permit rule.

Even after the agency issues the rule, states will have another two years to put their programs in place, but that is assuming no one challenges the next final rule, he said.

EPA will hold a public hearing on the operating permit rule Oct. 19 in the auditorium of its Washington headquarters. Requests to testify must be submitted by Oct. 5.

Comments on the proposed changes should be sent in duplicate by Nov. 28 to the EPA Air Docket, Attn: Docket No. A-93-50, Room M-1500, Waterside Mall, 401 M St. S.W., Washington, D.C. 20460. If possible, comments should be sent in paper and on a clearly labeled IBM-compatible, 3½-inch diskette, EPA said.

More information can be obtained from Michael Trutna, Mail Drop 15, EPA, Office of Air Quality Planning and Standards, Air Quality Management Division, Research Triangle Park, N.C. 27711; telephone (919) 541-5345.

The proposal will be published in next week's issue of *Environment Reporter*. It also will be included in an upcoming release of BNA's *Environment Library on CD* (ELCD).

#### Superfund

##### COST RECOVERY SUIT BROUGHT BY LIABLE PARTY IS ACTION FOR CONTRIBUTION, FIRST CIRCUIT SAYS

A company that is itself liable under the federal superfund law may not avoid the statute of limitation that applies to contribution claims by bringing a response cost recovery action under Section 107 of the act, a federal appeals court ruled Aug. 19 (*United Technologies Corp. v. Browning-Ferris Industries Inc.*, CA 1, No. 93-2253, 8/19/94).

The U.S. Court of Appeals for the First Circuit ruled that superfund contribution suits are those brought by liable parties, even if they seek recovery of "first-instance" costs as well as reimbursed costs. The court affirmed a trial court's dismissal of a claim on the ground it was brought beyond the three-year limitations period that applies to contribution suits.

The court ruled that drafters of the Comprehensive Environmental Response, Compensation, and Liability Act intended the term "contribution" under Section 113(f) to include actions by liable parties to recover disproportionate payments of first-instance costs—monies paid directly by them—as well as disproportionate payments of reimbursed costs. Only innocent parties may bring cost recovery suits under Superfund Section 107, the court said.



Mr. BARTON. I would now like to turn to the ranking member of the Oversight Committee, Mr. Wyden, for an opening statement that he may wish to make.

Mr. WYDEN. Thank you very much, Mr. Chairman, and the minority is alive and well behind all the paperwork.

Mr. BARTON. We are going to move that application out of your way. I am sorry.

Mr. WYDEN. We appreciate this important hearing. The Clean Air Act Amendments recognize that achieving clean air for our citizens requires a two-pronged attack. The target is emissions from both automobiles and industry. In adopting these amendments, Congress worked hard to strike a fair balance between the requirements for mobile sources such as automobiles and stationary sources such as industry.

The subcommittee has already had four hearings. They have focused almost exclusively on the mobile source provisions of the act. I think it is especially important that today we have the opportunity to hear from industry representatives.

It is very clear, for example, that if there is going to be relaxation with respect to the automobile provisions of the Clean Air Act, that industry will be asked by many parties to pick up the slack, and that is why it is so very important that we hear from industry and have an open discussion about what it would mean if there were changes in these policies that could have serious consequences for future economic growth.

Equally important to the subcommittee's work is the need to have balance among the panelists who participate. The minority members of the subcommittee do appreciate, Chairman Barton, the inclusion of an EPA witness, a State witness, and a citizen witness suggested by the minority in today's hearing. This will help to give our record a more complete picture. We look forward to more extensive citizen participation at future hearings.

Because emissions from industry often involve toxic chemicals and other pollutants that can cause respiratory problems, it is especially important to have effective regulation of industrial emissions in order to meet the public health needs of our citizens. Compiling all the applicable requirements in a single plant-wide permit as required by title V of the statute helps ensure effective control over the plant's emissions if they are toxics and other pollutants that can have dramatic effects on the health problems that seniors, children and other sensitive Americans face.

Consumers are not the only beneficiaries of title V. Collecting information on a plant's emission sources in order to comply with the title V permit requirements can also provide significant benefits to industry. The immediate benefits come from plants identifying emission sources that can be traced back to inefficient operation. Since pollution is certainly wasteful, taking steps to reduce emissions can make the plant more efficient and boost productivity.

The long-term benefits will come once the plant's emissions are regulated under a single operating permit. At that point, both the plant and the regulatory agencies can have a good handle on what the plant is emitting and can work together to devise better approaches that ensure particularly more flexibility for industry while achieving the same emission reductions.

That is what the Intel Corporation, the Oregon Department of Environmental Quality, and the Environmental Protection Agency have been doing at Intel's Aloha, Oregon, facility. The company has been working cooperatively with regulators to develop a model permit which would establish an overall cap on emissions. As long as the cap is not exceeded, Intel is in a position to make process changes to respond to changing market conditions, and is given the flexibility to achieve emission reductions in a way that is cost effective for the company.

The Oregon Department of Environmental Quality sees no reason why the example that you can find at Intel and other programs can't work for businesses across the country. Intel calls for the Environmental Protection Agency to use this permit program as a nationwide model.

What it is going to take to make title V work effectively is to make sure that EPA uses the flexibility that it has under the statute and that States will show some creativity.

For example, Oregon took the unusual step of helping a number of businesses in our State to avoid title V altogether. A far cry from the overarching bureaucracy that we see so often.

Ultimately, title V could help to revolutionize our whole approach to controlling air pollution by making market-based emissions trading programs a reality. These programs could provide a significant benefit to both the environment and the industry.

For an emissions trading program to work properly, it is essential to have good information about the sources, what they are emitting, and how much emission reduction is actually achieved.

The title V permit program ensures that this information is compiled, and the controls are in place to ensure that overall emission reductions actually occur. Without this, an emission trading program is not a trading program at all but, in my view, simply a license to pollute.

Mr. Chairman, again, I want to thank you for the way the witnesses have been handled today. I look forward to this important hearing and to working with you.

Mr. BARTON. I thank the gentleman. It is good to be patted on the back. Usually you have been hitting me somewhere else.

The Chair would recognize the gentleman from Pennsylvania for any opening statement no longer than 3 minutes that he might wish to make.

Mr. KLINK. Very brief, Mr. Chairman. Again, I thank you for convening this hearing that continues the investigation into the Clean Air Act Amendments of 1990.

Today's hearing, of course, focuses on title V of the Clean Air Act Amendments. It is hopefully going to begin to provide more certainty to industries that are trying to comply with their State's operating permit programs.

As many already know, implementation of title V has been seemingly complex for the Environmental Protection Agency to carry out. Originally scheduled to begin in 1994, the operating permit program is still met with uncertainty and concern by industries.

For instance, the EPA has recently proposed a new draft of the provisions related to revisions made in operating permits. The pre-



vious regulation was viewed as excessively burdensome to industry for even minor changes made in facilities' operating permits.

I am hopeful at today's hearing we will be able to offer some meaningful discussion as to how we can begin to solve the current problem with title V of the Clean Air Act Amendments. I look forward to the testimony of each of the panelists and thank each of you for taking time to be with us today. We look forward to hearing what you have to say.

Thank you.

Mr. BARTON. I thank the gentleman from Pennsylvania.

I would recognize the gentlelady from California for a 3-minute opening statement.

Ms. ESHOO. Thank you, Mr. Chairman, and especially for holding this important hearing today on the implementation of title V, the permitting program of the Clean Air Act.

Before I came to the House of Representatives, I served for many years on the Bay Area Air Quality Management District Board. In fact, I was serving as president when I left. So I have a great deal of regard for this law, carried it out and we have the cleanest air basin in the Nation. So the law can and does work very well.

I am proud to have voted for the strictest air quality standards in my State of California because they are critical for the health and safety of our citizens, and I believe it is what our citizens really want.

Although I am an ardent supporter of the Clean Air Act, I do have several concerns about title V. I am pleased we have the opportunity to discuss them today, and hopefully we are going to find some solutions.

I have the privilege of representing Silicon Valley, home of the high-technology industry whose companies represent significant promise for the future of our country in so many ways.

The continued success of the industry hinges upon its ability to respond rapidly to product change needs. They are not the oil industry and they are not the coal industry. As we are meeting here and speaking and working, changes are taking place. So, in order to remain competitive, these companies must continually be evolving, and this means scores of routine process upgrades, advancements in innovations each year. So the permitting process has to take this into consideration.

EPA's August 1994 proposal for title V would have required even minor production process changes to go through a lengthy review and approval process which would have hampered the high-tech industry's quick to market production process.

I am pleased that the EPA has decided to repropose the revisions of the August 1994 ruling. This represents a positive first step, and a willingness on the part of the EPA to make the Clean Air Act more responsive to actual industry conditions.

Although the EPA contends that its new proposal will provide flexibility for States and regulated sources, we need to ensure that the rhetoric, and I want to underscore this, that the rhetoric withstands the test of reality, and I think that is where the rubber meets the road.

Working with Intel in the State of Oregon, the EPA demonstrated its ability to implement title V effectively without ham-

pering the competitiveness of high-tech industries. However, P-4 took 2 years to develop and will not necessarily be adopted by other States. Although it provides regulatory relief for Intel, it only applies to one of its five U.S. plants, so we still have a ways to go.

We need to find solutions to these problems which apply to all States, and which afford all industries a degree of certainty and flexibility that they need to remain competitive worldwide while retaining the mission of reducing emissions.

So I look forward to what we are going to hear today, and what we can do to really make this thing work. I believe that we can write effective environmental regulations which protect our people without creating needless administrative burdens for those who must comply with them.

I would like to add just a footnote to this. If I thought my constituents, quite frankly, were trying to duck their responsibilities to the community and the country, most frankly, I wouldn't stand next to them, and I would say that to them. I don't find that to be the case, and I think that we need to make this work so that they can do their work and still retain their legitimate commitment, as I said, to our communities and our country.

Thank you, Mr. Chairman.

Mr. BARTON. Thank you.

The Chair is going to announce, that the first vote of the day has just been announced. I don't think it would be appropriate to start the testimony. We still have one gentleman who, I am almost certain, would wish to make an opening statement.

The Chair will give that gentleman the option, you can make the statement now and we can go vote, or you can come back after the vote and make an opening statement. But in either event, we would not hear any testimony until after the vote.

Does the gentleman from California wish to make his opening statement now or defer it until after the vote?

Mr. WAXMAN. Mr. Chairman, why don't I make it. It is a brief one, and then we will have time to vote. We have only had the first bell.

Mr. BARTON. Okay. Then the Chair would recognize the gentleman from California for an opening statement, a brief opening statement of the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you, Mr. Chairman. I want to commend you on holding this hearing, and thank you for your cooperation with the members of the minority in having witnesses testify to give balance to the hearing today.

The permit rule is not glamorous, but in many ways it is the heart of the Clean Air Act. An effective permit program is crucial to the success of the Clean Air Act for two fundamental reasons. First, permits are essential because they define the clean-up obligations of individual pollution sources. They translate the act's broad prescriptions to reduce pollution to specific requirements for specific facilities.

Second, permits are essential because they establish the monitoring requirements needed to ensure compliance with the emission limitations. The permitting requirements in the Clean Air Act have always had strong bipartisan support.

In 1977, the Clean Air Act was amended to establish permitting requirements for new sources. These changes were supported on a broad, bipartisan basis.

In 1989, President Bush proposed that this permit requirement be extended to existing sources of pollution, Congress agreed, and President Bush's proposal was included in the 1990 amendments.

When we added the new permit title to the act in 1990, we were trying to achieve several important goals. First, we wanted to reduce air pollution by improving compliance. Prior to the 1990 amendments, noncompliance with emission standards was a major problem. In many States, pollution rules and State implementation plans were achieving only 80 percent or less of the potential emission reductions. By requiring permits with new monitoring and reporting requirements, Congress helped to significantly improve compliance.

Second, we wanted to increase flexibility for industry. Without a permit program, all emission standards for a facility have to be written into the State implementation plan. The changes then require a SIP modification which requires both the State and Federal rulemaking. Congress wanted to streamline this process by removing the site-specific emission standards from SIP's and putting them into permits.

Third, we wanted to provide greater certainty to industry. Prior to the 1990 amendments, it was often unclear what pollution standards applied to a source because the standards were buried in SIP's and SIP revisions and were subject sometimes to unpredictable interpretations by State and Federal courts as well as officials. We addressed this problem in the permit title providing that sources that complied with their permit terms could be given a permit shield that would insulate them from any further enforcement actions.

Finally, we wanted to make sure the communities that are affected by a facility's emissions have an opportunity to participate in the setting of emission standards for that facility. The permit process provided the ideal opportunity for fostering this participation.

The goals that we had in 1990 are as important today as they were then. That is why it is in all of our interest to have an effective permitting program under the Clean Air Act. I hope this hearing will help us understand whether these important goals are being achieved.

I thank you, Mr. Chairman, for this opportunity to make this statement, and I will look forward to the testimony of our witnesses.

Mr. BARTON. I appreciate the gentleman's opening statement.

The subcommittee will be in recess until 10:42 a.m. We will reconvene at 10:42 a.m. with the first panel.

[Brief recess.]

Mr. BARTON. The subcommittee will come to order.

The distinguished ranking member of the full committee, and the former chairman of this subcommittee, does wish to make an opening statement, so we will recognize the honorable John Dingell of Michigan for an opening statement.



Mr. DINGELL. Mr. Chairman, thank you. Again, I commend you for holding hearings on the subject of the implementation of the Clean Air Act Amendments of 1990. In particular, a close look at the status of the Agency's implementation of title V, the operating permit provisions, is overdue.

The subcommittee has had several concerns about how this matter has been handled from the beginning, and during my tenure as chairman of this subcommittee and of the full committee, I communicated in rather clear fashion my views about the delay, about ineffectual guidance to the States, and about inadequate EPA resources.

In July 1992, this program, which was intended to make compliance more workable for all concerned, was turned into a procedural nightmare by the administration's final rule. In August of 1994, proposed changes promised to make things worse.

In 1990, the Congress envisioned title V as a modest tool for bringing some clarity to the world of stationary source regulations under the Federal and State clean air programs. While the goal of consolidating source requirements and eliminating duplicate and overlapping provisions is a good one, it may not be worth the billions of dollars that EPA seems to want the program to cost.

There is an important role for a permit program, but not one which imposes huge upfront cost to industry, and not one that smothers industry innovation, not one that buries the public with meaningful information about trivial and inconsequential activities at a source, and not one that ignores established working State permit programs.

I am heartened by EPA's recognition that the program needs rethinking. Also understand that to a large extent the problems predate this administration. Still, this Agency's effort to eliminate delays associated with the revision of permits and to cutback on paperwork needed for applications must proceed swiftly and decisively. Companies are incurring huge costs for applications today. A solution promulgated next year or even next fall will simply increase the cost and the difficulties that exist.

Similarly, companies are making decisions today of whether to expand in this country or to seek a less regulated environment abroad. They cannot wait a year to see whether EPA will permit them to remain competitive. If this program is to survive, EPA must recognize these problems, take responsibility for them, and rectify them now.

I commend you for these hearings, Mr. Chairman, and I thank you for recognizing me.

Mr. BARTON. I thank the distinguished gentleman for that statement.

Does the gentleman from Connecticut wish to make an opening statement?

Mr. FRANKS. No, Mr. Chairman.

Mr. BARTON. Does the gentleman from California wish to make an opening statement?

Mr. COX. Yes, thank you, Mr. Chairman.

Mr. BARTON. So recognized.

Mr. COX. I am pleased that the subcommittee is conducting oversight of EPA's administration of its operating permit program. The

scope and cost of the permit program are enormous, reaching tens of thousands of small businesses, large businesses, and imposing a direct burden on the economy that EPA has conservatively estimated at more than half-a-billion dollars, even though other analysts have concluded the program's direct and indirect costs are far greater.

Serious questions have been raised over both the theory underlying the program and its implementation. Some commentators have questioned why a program this costly should be imposed on American businesses at all when, by definition, it creates no new substantive requirements and is intended merely to consolidate in a single place all the Federal air pollution requirements to which a permitted source is subject.

Each and every one of these requirements will be binding on the sources irrespective of the permit, and would be fully enforceable by EPA, State regulators, private environmental organizations, and affected private citizens. EPA itself, in promulgating the final permitting rule in 1992, was unable to conclude that the program costs exceeded its benefits.

One of the reasons for this conclusion, of course, is the extraordinarily burdensome regulatory superstructure that EPA has erected over a fairly brief title of the act. As contemplated by the Agency, sources will be required to formulate remarkably elaborate and expensive permit applications which will then undergo a labyrinthine review process at both the State and Federal level.

Even more problematic is the program's potential for paralyzing private sector operations. Under EPA's regulations, even the most harmless variations in plant operations can be ensnared in the program's Byzantine permit modification processes. Even making the utterly unrealistic assumption that State and Federal regulators are timely in their review, these provisions have the capacity to wreak economic havoc for negligible environmental benefits. EPA's administration of the program has also greatly complicated the task of both the private sector and the States.

Congress imposed extraordinary and, in all likelihood, unattainable regulatory burdens on EPA in the 1990 amendments, but even after every allowance for that fact has been made, the Agency has clearly handled this program in a manner that is unfair both to regulated parties and to the States.

Today, 5 years after enactment of the amendments, almost 4 years after the deadline for the final permit rule, and 3 years after the final rule was published, the Agency continues to attempt sweeping substantive revisions in its terms—revisions that, incredibly enough, would make this already unwieldy program less flexible, more expensive, and more complex.

In addition to the severe substantive problems with the changes being proposed, it is patently unfair, both to the States and to the regulated community to continue to modify major elements of the program 6 months before the deadline for permit applications specified in the act. I am seriously concerned that the Agency's mishandling of this program is creating a serious risk of destabilizing the entire air program, jeopardizing both air quality and economic growth, and I look forward to hearing more about these issues.

Mr. BARTON. I thank the gentleman.

The Chair will now call forward the first panel. We have Mr. George Carpenter, Director of North American Health, Safety and the Environment for the Proctor & Gamble Company. We have Mr. Bill Sheppard, who is Manager of the New Mexico Site Machines and Services for the Intel Corporation. We have Ms. LaNell S. Anderson, who is a private citizen from the great State of Texas, from Channelview, Texas. And we have Mr. Charles E. Mitchell Rentschler, President and Chief Executive Officer of the Hamilton Foundry and Machine Company from Harrison, Ohio.

Welcome to the Oversight and Investigations Subcommittee. The Chair advises you that it is the practice of this subcommittee to take all testimony under oath. Do any of you have any objection to testifying under oath?

[Chorus of nays.]

Mr. BARTON. The Chair would also advise you that it is the tradition of this subcommittee to allow you to have the advice of counsel during your testimony. Do any of you wish to have counsel present or have counsel present with you?

[Chorus of nays.]

Mr. BARTON. If you would stand and raise your right hand.

[Witnesses sworn.]

Ms. ESHOO. Whatever happened to "so help me God," what happened to that?

Mr. BARTON. The gentlelady from California asked what happened to "so help me God," I have been advised that in the past there was a concern raised about that. I am more than willing to reinstate it. I haven't done it for fear of offending, but if there is a wish to do it, we will certainly review this policy.

Ms. ESHOO. I was just curious. Thank you.

Mr. BARTON. I wondered the very same thing.

Mr. Carpenter, we would welcome your statement for the record, and ask you to summarize it orally, if possible, in 5 minutes.

**TESTIMONY OF GEORGE D. CARPENTER, DIRECTOR, HEALTH, SAFETY AND ENVIRONMENT FOR NORTH AMERICA, PROCTOR & GAMBLE CO.; BILL F. SHEPPARD, NEW MEXICO SITE MANAGER, INTEL CORP.; LANNELL S. ANDERSON, CHANNELVIEW, TX; AND CHARLES E. MITCHELL RENTSCHLER, PRESIDENT, HAMILTON FOUNDRY & MACHINE CO.**

Mr. CARPENTER. Mr. Chairman, members of the subcommittee, my name is George Carpenter. I am Director of Health, Safety and Environment, North America, for the Proctor & Gamble Company.

I want to thank you for the opportunity to appear before you today to describe how the title V requirements of the 1990 Clean Air Act Amendments work to the disadvantage of innovation and competitiveness for a company like mine.

Proctor & Gamble's business is one of continuous and rapid technical innovation, and the speed with which we can bring that innovation and the value of that innovation to the Nation's consumers.

Each year, we spend over 3.5 percent of our sales, over \$1 billion, on research and development of new and improved products. Title V permitting requirements of the Clean Air Act hinder and delay



product innovation and our speed to market without any commensurate contribution to air quality.

Thirty-six of Proctor & Gamble's U.S. facilities are impacted by EPA's title V regulations. Nowhere else in the world do we face the kind of delays for routine and small improvements to our products, processes, and our ability to respond to the marketplace that the procedural requirements of the Clean Air Act place in our path to be competitive.

The title V regulations do not, nor were they ever intended to impose substantive requirements for air pollution controls. Those are done elsewhere in the act. For years, two-thirds of the States have had operating permit programs. Importantly, these State programs have not been an unmanageable burden on industry's need to make routine and frequent changes in our production lines. However, EPA's implementation has taken what was a simple and workable requirement at the State level and has turned it in to a monster of consultant studies, legal opinions on its details, volumes of permit applications, and unnecessary delays in minor production changes, changes that were previously made on a day-to-day basis by manufacturing managers and technicians, not environmental experts.

In the name of air quality, but with no discernable benefit to air quality, EPA has created a program for the Federal Government to micromanage innovation and manufacturing production decisions.

Let me describe how this impacts us. In 1994, had title V been in place, 177 of P&G's projects, nearly half-a-billion dollars in capital spending, would have been subject to months of delays and uncertainties of title V permitting. Now this doesn't include the many changes we make without capital spending needed, changes in formula, things like that. But these changes are caught in the web of EPA's regulations.

Now this is a dramatic and significant increase from what has been required to date. If I take those same 177 projects, only one was large enough to come under the Federal permitting requirements that were in place pre-title V.

The burden to implement these regulations is also significant. We have already spent over 17 effort years of work by P&G employees, to say nothing of countless consultant studies to prepare the permit applications. I estimate we are about two-thirds done with that work. In these days of scarce corporate resources and restructuring, we have already spent 17 effort years for no environmental or air quality improvement.

However, if it was just 17 wasted effort years by our people that was at stake, I probably wouldn't be here today asking for your help. I am here because these title V rules threaten our ability to compete, to bring new innovation and improved products to our consumers. These title V regulations go to the heart of our business as a company whose success is based on innovation and the speed with which we bring that innovation to the marketplace.

One must also question whether regulations as complex and confusing as these can be practically implemented at the manufacturing plant level. In their team meetings to implement title V, our best corporate technical and legal experts spend hours debating on what is required and how to satisfy the various requirements of

title V permitting. But, it doesn't end there. Once they are submitted and the permits are approved, these permits will apply at the day-to-day level of our manufacturing plant decisionmaking.

The complexity of these regulations and the legal consequences of making the wrong interpretation at the plant level raises the questions of how we make these day-to-day decisions in the future.

I would challenge anyone who does not spend their life buried in the minutia of U.S. environmental regulation to read these regulations and the proposed regulations, and cogently describe what it is they require you to do. That is what our plant managers and our plant people face when they live with these over time.

Let me describe one of the absurdities that makes this so hard of a regulation to work with.

Mr. BARTON. If you can do it in less than a minute because your time has expired.

Mr. CARPENTER. These regulations require us to ignore the presence of air pollution controls if those controls were required by State law and not Federal law. In other words, if I have a 99 percent efficient piece of control equipment required by Federal regulation, and that equipment emits one pound, it counts as one pound. But if that same control equipment is in place because of a State regulation, not a Federal regulation, then that same one pound of actual emissions counts as 100 pounds of emissions. That one single requirement doubled the number of P&G plants subject to this rule.

Mr. Chairman, thank you for the opportunity to make these remarks.

[The prepared statement of George D. Carpenter follows:]

PREPARED STATEMENT OF GEORGE D. CARPENTER, DIRECTOR, HEALTH, SAFETY & ENVIRONMENT FOR NORTH AMERICA, THE PROCTER & GAMBLE COMPANY

Mr. Chairman and members of the Subcommittee, my name is George D. Carpenter, and I am Director of Health, Safety & Environment for Procter & Gamble's North American Manufacturing, Engineering and Distribution operations. P&G's North American business represents roughly 50% of our worldwide consumer products business, encompassing 59 facilities and 39,000 U.S. employees.

I am here today representing the Air Implementation Reform Coalition (A.I.R.), an Ad Hoc group of companies whose success hinges on our ability to respond rapidly to product and process change needs. We are quick-to-market, technology-intensive, globally competitive companies. We are seeking reforms to the Clean Air Act to ease needless administrative burdens on industry and the states. The procedural burdens imposed by the Act are driving up the costs of doing business without an environmental payback—to the detriment of American business, job opportunities and competitiveness.

The coalition is committed to compliance with Clean Air Act requirements that set emissions and other substantive standards. We do not support changes to the law that would erode or roll back the environmental improvements called for by the Clean Air Act. Instead, we believe that manufacturing agility and speed can coexist with accountability under common-sense regulations.

I want to thank you for the opportunity to explain to this subcommittee how the Title V Permitting Requirements of the 1990 Clean Air Act Amendments work to the disadvantage of innovation and global competitiveness for a company like mine. Thirty-six of Procter & Gamble's U.S. facilities are impacted by EPA's Title V regulations. Procter & Gamble's business is based on a philosophy of providing products of superior quality and value that best fill the needs of the world's consumers. Each year we spend over 3.5% of sales, over \$1 billion per year, on the research and development of new and improved products. Our business is based on continuous and rapid technical innovation and the speed with which we can bring those innovations to the world's consumers. The Title V permitting requirements of the Clean Air Act hinder and delay product innovation and speed to market without any commensu-

rate contribution to improved air quality. Nowhere else in the world do we face the kind of delays for routine and small improvements to our products, processes and our ability to respond to the dynamics of the marketplace that the procedural requirements of the U.S. Clean Air Act places in our path to be competitive!

Today, I want to make several points: First, the Title V regulations at issue have nothing to do with improved air quality. Second, the Title V requirements create unnecessary delay, cost, and unneeded bureaucracy for both business that must apply for the federal permits before making routine and minor changes... and for the state and local government agencies that must process those stacks of paper. Third, I want to urge the EPA and the Congress to eliminate these barriers to American competitiveness and innovation, which can be done without compromising the air quality improvements we as a nation have said we want.

#### TITLE V REGULATIONS DO NOT CONTRIBUTE TO IMPROVED AIR QUALITY

Title V regulations do not, nor were they ever intended to, impose substantive requirements for air pollution controls. Those controls on emissions appear elsewhere in the Act. Rather, Title V was merely intended to create a federal operating permit program, duplicating state operating permit requirements that are already in place in two-thirds of the states. But, EPA's implementation has taken what was a simple, workable requirement at the state level and has turned it into a monster of consultant studies, legal opinions on its details, volumes of permit applications, and unnecessary delays in minor production changes that were previously made on a day-to-day basis by manufacturing managers and technicians. In the name of air quality, but with no discernible benefit to air quality, EPA has created a program for the federal government to micro-manage innovation and manufacturing production decisions.

On February 9, 1995, EPA Administrator Carol Browner testified before this Subcommittee on the Clean Air Act. When describing whether or not the Clean Air Act has worked since 1970 to clean up our air she said, "I believe any legitimate assessment must conclude with a resounding YES!" Since 1970, emissions have been dramatically reduced<sup>1</sup> (Particulate-78%, Lead-98%, SO<sub>2</sub>-30%, Carbon Monoxide-24%, and Volatile Organic Compounds-24%). These decreases have occurred over the same time period that the U.S. population has increased by 25%, the domestic economy grew by 71% and the number of vehicle miles driven has increased 104%. Further, while industry contributed 45% of the total emissions (250 million tons) of criteria pollutants in 1970, today industry contributes only 12-15% of today's total of 179 million tons. This is a statistic we as Americans should be proud of. However, we should not lose sight of the fact that the Title V administrative burdens we are here to discuss today are in no way responsible for the significant emission reductions we have achieved, nor will they contribute to any emissions reductions we achieve in the future.

The subject of balancing regulatory burdens and costs against the environmental benefits those regulations may deliver has been a matter of intense public debate. Title V of the Clean Air Act represents an opportunity to put that philosophy into action. By reforming Title V, we can eliminate significant impediments to innovation, modernization and competitiveness without ever compromising the environmental and air quality gains we have achieved in the past and expect to achieve in the future.

#### TITLE V REGULATIONS CREATE UNNECESSARY DELAY, COST AND BUREAUCRACY

For years, many states (EPA cites over two-thirds of the states) have had operating permit programs, long before the 1990 Clean Air Act Amendments created the federal requirement. These state programs have tracked the small changes in production capacity and emissions that were below the large source threshold for federally required New Source Review. Importantly, these state programs have not been an unmanageable burden on industry's need to make routine and frequent changes on our production lines in response to the pressures of the market place. This is not the case with EPA's new Title V permit program.

In preparing for this testimony, I reviewed our 1994 capital expenditures in an attempt to determine the impact of these regulations on our U.S. business and on our routine changes and improvements in our processes and products. In 1994, 177 projects, nearly half a billion dollars in capital spending, would have been subjected to the delays and uncertainty of the federal Title V review program had it been in

<sup>1</sup>National Air Quality and Emissions Trends Report, 1993, United States Environmental Protection Agency, Office of Air Quality Planning and Standards, October 1994.



place. And this is only part of the impact on our business. Not counted in the above 177 projects are the routine changes in formula and operation for which no capital expenditure was needed, but which are also caught in the bureaucracy of EPA's proposed Title V regulations. Again, it is important to remember that these Title V burdens and delays do not result in any additional controls or emission reductions above and beyond what is already required elsewhere in the Act.

This Title V burden is a dramatic and significant increase from what has historically been required. Of the 177 capital projects in 1994 that would have been caught by EPA's proposed Title V regulations, only one was large enough to come under the existing requirements of federally mandated New Source Review/Prevention of Significant Deterioration permitting already required under the Clean Air Act.

The burden to implement these requirements, doing the studies and preparing the data required by the Title V regulations, has also been significant. We have already spent over 17 effort years of work by P&G employees, to say nothing of numerous consultant studies, to prepare for the permit applications, and have not yet submitted even our first permit application. I anticipate another \$1 million in consultant spending, in addition to further internal resource effort, before we are finished with the initial application process. In these days of scarce corporate resources and restructuring to remain competitive, we have spent 17 effort years for no environmental or air quality improvement. (Remember—these are direct costs. They do not include the lost commercial opportunities and "time to market" losses in revenue that are even more key to the nation's ability to remain competitive than direct costs alone.)

One must also question whether regulations as complex and confusing as these Title V regulations are, can be practically implemented at the manufacturing plant level. To implement these permits, we have assembled teams of the best environmental technical and legal resources we have internal to P&G, and have supplemented their efforts with outside consultants and legal counsel. In their team meetings, these experts spend hours debating what is required and how to satisfy the information requirements. Yet, once submitted, these permits impact day to day decisions made on the manufacturing plant floor. For years we have worked to take environmental management out of the domain of staff experts and to make it part of the daily management work of all our employees. The majority of our plant environmental managers are not lifelong environmental professionals but are production people who take 3-5 year assignments in environmental management and then move back to line production jobs. I believe this is the correct direction... making the environment part of everyone's job. Yet, the complexity of these regulations, and the consequences of making the wrong interpretation, raises the question of the practicality of this approach. I would challenge anyone, who does not spend their life in the minutiae of U.S. environmental law, to read these proposed regulations and then cogently describe what they require.

The burdens and increased costs of Title V are not confined to business. States will have to staff up to handle the virtual flood of paperwork that business is required to submit. In its January 26, 1995 comments to EPA on the Title V proposed regulations, the Ohio state EPA wrote, "One of the most frustrating aspects of the proposal is the tremendous increase in regulatory burden being placed on the state and local regulatory agencies and the regulated community without any apparent concern by U.S. EPA. U.S. EPA will not have to review and process the thousands of minor permit modification applications. This will take precious state and local regulatory agencies resources away from programs that result in environmental improvements and direct them towards meaningless paper pushing activities. Note, Ohio's current state new source review program issues 2,000 small installation permits annually."<sup>2</sup> Ohio EPA has spent over \$1 million in consultant costs, and "countless hours of agency staff time" to design its original Title V program, and now faces even more costs to implement EPA's new proposed regulations. For example Ohio EPA has publicly stated that they will have to increase the staff of their state air program by, 50%, from 200 to 300 people just to accommodate Title V.

#### EPA AND CONGRESS CAN FIX THE PROBLEMS OF TITLE V WITH NO COMPROMISE TO AIR QUALITY

Since the Title V requirements create significant problems for both business' ability to innovate and compete, and for the state and local agencies who must increase their organizations in order to implement them, all with no discernible or quantifi-

<sup>2</sup> Ohio's Comments To The Proposed Revisions to 40 CFR Part 70 As Published in the August 29, 1994 Federal Register Pages 44460 through 44539, Donald R. Schregardus, Director Ohio Environmental Protection Agency, January 26, 1995.

able benefit to air quality... it directly follows that this program should be a priority target for regulatory reform.

Procter & Gamble, together with many other stakeholders in this issue, is working with EPA, through the regulatory process, to fix the problems I've spoken of today. We are all encouraged by the recent claims of new flexibility by EPA. However, EPA's history of effectively simplifying complex regulations and eliminating unnecessary burdens causes us to be cautious in our optimism.

On February 9, EPA Administrator Carol Browner promised this subcommittee that EPA would publish a proposed fix for some of the Title V problems that the states and business have complained of. It is now the middle of May and we have yet to see EPA's proposal. What we have heard from reliable sources bothers us greatly, as indications are that EPA is not yet willing to pursue real reform of Title V regulations that will allow industry the speed and agility we need to be competitive globally.

Another example of EPA's failure to follow through on their commitments to regulatory simplification is the Enhanced Monitoring rule, a rule very closely tied to Title V regulations. On April 4, 1995, EPA announced it was withdrawing the Enhanced Monitoring (EM) rule from OMB review "in order to take a fresh look at its proposed rule" and "would seek an extension of the court-ordered deadline for issuing the final EM rule to allow time for stakeholder involvement in the development of this rule." This was a step in the right direction. They indicated they would seek a one year extension of the court ordered deadline. In actuality they only asked the court for a 60 day extension. They promised to hold stakeholder meetings within 3 weeks of April 4; yet the first meeting is scheduled for May 31, 1995, only 30 days from when EPA is committed to have a final rule. This action again calls into question EPA's intention to pursue significant reform from the last proposal it sent to OMB. In fact, it is hard to understand how EPA can even meet the constraints of the 60 day extension to publish an enhanced monitoring rule, unless they proceed with something very close to what they pulled from OMB review, possibly published as an "interim final" rule. This is hardly what we would call regulatory relief.

Therefore, we believe the Congress should enact a narrow technical fix to Title V this year. Time is of the essence, because states are already putting in place and implementing EPA's existing regulations. We need the legislative fix to help protect our competitiveness in the event EPA fails to deliver on its promises of true reform.

I again want to thank the Chairman, and members of the Subcommittee, for this opportunity to bring to your attention the significant problems and barriers to technical innovation and global competitiveness that the Title V requirements create for American business.

Mr. BARTON. Thank you.

We may follow-up with a question about this one pound becomes 100 pounds.

Mr. Sheppard of Intel.

#### TESTIMONY OF BILL F. SHEPPARD

Mr. SHEPPARD. Thank you, Mr. Chairman. I am Bill Sheppard, the Site Manager for Intel in New Mexico. I would like to thank you, Chairman Barton, for the invitation to speak today.

I would also like to recognize Representatives Wyden, Furse and Eshoo for their work with Intel over the years.

Intel is the world's largest semiconductor manufacturer. We employ over 23,000 Americans. We are recognized as an environmental leader in our industry and have received several awards. We were recently recognized by Vice President Al Gore.

I would like to tell you a little bit about my operation in New Mexico. We employ 4,200 people in Rio Rancho, which is a suburb of Albuquerque, and are doing the majority of Intel's production. I am currently finishing a \$2 billion plant expansion that I hope someday will employ 5,500 people.

Title V is extremely important to Intel. Semiconductor manufacturing is one of the fastest changing businesses in the world today. With all the rapid advances in semiconductor technology, we are



literally quick or we are dead. To stay ahead requires continuous improvement and continuous changes in our products and our processes.

A typical factory at Intel makes 60 changes per year. That is more than one per week. During a 5-year permit term, we would typically introduce at least two new generations of technology and its relevant process equipment. Five years is an eternity in my business.

For example, over the last 5 years, we have introduced three new generations of microprocessors, starting with the 486. Currently running the Pentium, and have just recently announced the P-6 which will be released later this year. The Pentium operates at 100 million calculations per second and has over 3 million transistors. The P-6 will have 5 million transistors and operate at twice the speed of the Pentium.

Essentially what we have done in our business is taken main-frame computing power and put it on the desktop for a fraction of the cost. There are not many American industries that can claim a dominant share in a world market. But permitting delays threaten our continued success.

Let me spend a minute and tell you my perspective of what is wrong with title V, and let me say at the outset that this is one of the most important issues to Intel and our industry, and that is why I am here today.

The reason is, it threatens our ability to respond quickly to an everchanging market. I compete in a global marketplace. My foreign competitors do not have to live by the same rules that I do. This is an industry that still does the majority of its manufacturing in the United States.

For example, right now, I have the opportunity to expand my plant capacity in Rio Rancho by almost 20 percent. That could create somewhere between 600 and 1,000 new jobs, but, because of permitting requirements and the delays involved, I will not be able to do that, and I will not be able to take advantage of these increased market opportunities.

The computer industry is highly fragmented. There are no standard setting bodies. The rule-of-thumb in my business is: he who gets to market in volume first sets the standard. That is why Intel is in the lead today.

The title V process, however, would require that all changes be run through a public review. This may take several months. In the meantime, our overseas competitors have beat us to the marketplace and gained that share.

I want to be clear that this is more than an environmental issue, this is an economic issue. We meet or exceed all air standards, and we can live with the regulations but not the delays and the bureaucracy. Title V is good in concept but poor in implementation. We believe that it was intended to simply collect all Federal requirements in one place. The problem is, as presently constructed, it is too complicated, too bureaucratic, and way too costly.

Ironically, it may even stifle our attempts at pollution prevention because companies will avoid making changes that may trigger a permit revision. My company is built on innovation and change,

and we believe that pollution is a sign of waste and inefficiency. Pollution prevention is innovation.

Now I need to mention the P-4 experience we have had in Oregon. To solve our permit delay problems, we worked with the State of Oregon and EPA to develop a model permit. The Pollution Prevention and Permitting Pilot, called P-4, combines flexibility with environmental results.

Basically, rather than worrying about every change at the plant, this permit put a cap on our air emissions. As long as we stay within the cap, our changes are preapproved. We took it one step further, and this, I believe, is precedent setting. We stipulated pollution prevention conditions on a voluntary basis.

What should you do to help us? One word, flexibility. The program must protect the environment and allow economic progress. We believe that it was not your intent to create a system that repels technological innovation and stifles the prevention of pollution. We believe the best way to fix the problem is through targeted legislative change.

We welcome EPA's efforts to fix some of these problems, but it may be too little, too late. Even if a workable system emerges from EPA, it will be litigated and could be overturned like their 1992 rule.

In conclusion, I appreciate the opportunity to speak to this committee today. I cannot overemphasize its importance to Intel and other quick-to-market companies. I appreciate the great dialogue with EPA on this issue, and especially on P-4, and I am heartened by recent movement, and I hope our recommendations will be adopted.

Thank you.

[The prepared statement of Bill F. Sheppard follows:]

#### PREPARED STATEMENT OF BILL F. SHEPPARD ON BEHALF OF INTEL CORPORATION

##### I. INTRODUCTION

My name is William Sheppard. I am the New Mexico Site Manager for Intel Corporation. I appreciate the opportunity to testify for this important hearing on the implementation of the Clean Air Act. I especially would like to thank Chairman Barton and Representative Wyden for inviting me here today as well as Representatives Furse and Eshoo for their interest and willingness to work with Intel to find an appropriate solution to the problems presented by Title V of the Clean Air Act.

The topic of this hearing—the Federal permitting program under Title V of the Clean Air Act—is of paramount importance to Intel and other “quick-to-market” companies, particularly companies in the semiconductor industry and our customers in the electronics industry. It is important to understand from the outset that Intel regards the Title V permitting program as a critical rulemaking from the perspective of the global competitiveness of the U.S. semiconductor industry.

Intel, a U.S. corporation headquartered in Santa Clara, California, is the world's largest semiconductor manufacturer. With market value over \$35 billion and net revenue well over \$10 billion, Intel currently employs over 23,000 Americans at five major U.S. sites in Chandler, Arizona; Santa Clara and Folsom, California; Rio Rancho, New Mexico; and Aloha, Oregon. In addition, Intel is committed to expansion and creation of jobs in the United States. Between May of 1993 and October of 1994, Intel has announced expansions at all five of its major U.S. manufacturing sites that will create over 7,400 new American jobs.

The 1990 Clean Air Act Amendments in general, and Title V in particular, have raised flexibility concerns for Intel and other “quick-to-market” companies. In particular, Intel's paramount goal is to ensure the compatibility of the Title V permit application, issuance, revision and renewal requirements with the hundreds of routine process upgrades, advancements and innovations that a semiconductor manufacturer must undertake each year to compete in the global marketplace, to control

costs, to increase output, to maintain quality, to control pollution and to meet corporate pollution prevention goals. Regulatory flexibility—as defined by the ability of our industry to undertake these routine changes without undue permitting delays—is critical to global competitiveness.

Given Intel's commitment to expansion and creation of jobs in the United States, Intel initiated a dialogue with EPA to explore solutions to our flexibility concerns to achieve three overriding goals: (1) improved air quality; (2) public accountability; and (3) industry flexibility to compete in the global marketplace.

In this context, the Title V operating permit program provisions have represented a key area of Intel focus. For example, Intel's participation in the "Pollution Prevention in Permits Pilot" project—known as the P4 project—to explore development of a "model" Title V operating permit for our Aloha, Oregon facility, involved a joint effort by EPA, the State and Intel. After a tremendous effort by all parties, the resulting permit is rapidly becoming a national model for other States and industries struggling to issue and implement Title V permits. Intel is also an active member of the Electronic Industries Clean Air Task Force—a self-funded coalition of major U.S. electronics and semiconductor manufacturers affiliated with the Electronics Industries Association—that has commented on many Clean Air Act rules and focused much of its attention on the implementation of Title V. Finally, Intel co-chairs the Air Implementation Reform (A.I.R.) Coalition—an Ad Hoc coalition of quick-to-market companies with the goal of streamlining the procedural burdens imposed by the Clean Air Act.

In my testimony today, I would like to discuss the key flexibility-related concerns that Intel has with regard to the Title V program. My comments focus on the draft P4 permit as the benchmark for an approach that would strike a reasonable balance between our need for flexibility and EPA's objective to ensure adequate public accountability under Title V. First, however, I would like to provide some background on Intel's semiconductor manufacturing operations, both from a technical standpoint, by describing the types of changes that we undertake at our facilities on a routine basis, and from a regulatory standpoint

## BACKGROUND ON SEMICONDUCTOR MANUFACTURING

### I. ROUTINE SEMICONDUCTOR MANUFACTURING CHANGES

The technologically dynamic nature of the semiconductor industry distinguishes it from other traditional manufacturing sectors. Indeed, semiconductor manufacturing processes are in constant evolution. Roughly every 18 to 24 months, new manufacturing processes are introduced, and of these new processes, approximately one-third involve major departures from the prior processes in terms of chemistries, equipment, and/or chemical use.

Every eighteen months, Intel doubles the number of transistors on a given piece of silicon. Indeed, during the last 10 years, Intel has engaged in continual advancement of its microprocessors to meet global competitive demands: Intel's 386 microprocessor has 275,000 transistors; the 486 microprocessor has more than one million transistors; the Pentium® processor has over three million transistors; and the newly announced "P-6" processor will have over 5 million transistors and run twice as fast as the Pentium.®

To provide a concrete example of the types of business challenges faced by the semiconductor industry, Intel has conducted an analysis of a typical, modern semiconductor manufacturing facility. This analysis demonstrates that beginning at start-up, and for each subsequent five-year period that follows, a typical facility using the latest process technology would:

- Introduce at least two new generations of manufacturing technology, which may occur through constant changes phased in over time or by completely "gutting" the interior of the facility other than the piping, ducts and other components which link the manufacturing operation with the general facility services area.
- Make 30 to 60 process chemical and equipment changes per year as existing processes are refined and new processes are developed.

Five years is an eternity in the semiconductor business. For example, in five years Intel introduced and ramped the 486 processor, introduced and ramped the Pentium® processor and introduced the new "P-6" processor. Yet five years is also the typical life of a Title V air permit. Given the rapid pace of change in our industry, Intel could expect to go through 150 to 300 permit revisions in just one permit cycle. State regulatory agencies do not have the resources to manage this volume of paperwork. Also, Intel cannot reasonably hope to predict all of the changes that will take place over a five year period. Nor do I think this would be a useful exer-



cise. It is far more useful to keep our focus on what is really important—controlling air emissions.

## II. AIR PERMITS FOR SEMICONDUCTOR MANUFACTURING

Intel's five major U.S. sites all include active manufacturing operations and research and development facilities, but differ substantially in terms of production capacity and manufacturing processes.

I manage one of our largest facilities in Rio Rancho—a suburb of Albuquerque, New Mexico. This facility currently produces over 60% of Intel's products and is the largest private employer in the State, projected to employ 5500 full time workers and currently employing another 3000 contractors. Intel recently decided to expand this facility. When it's completed, our investment in the expansion is expected to be well over \$2 billion. In total, Intel has invested nearly \$3 billion in New Mexico.

The Intel New Mexico site has three manufacturing plants which produce a variety of semiconductor products. Pentium® processors for powering desktop computers, microcontrollers for car engines and antilock braking systems, flash memory for portable computers and cellular phones, and numerous other microcontrollers for everything from laser printers to traffic signals and VCRs are all made in our New Mexico plants. Making these "leading edge" components requires continuous improvement and adjustment of the manufacturing lines.

With multiple products and rapidly changing markets, the flexibility to move and change operations within the plants is critical to the success of our business. Yet the changes we make rarely effect total site air emissions. If we are forced into a Title V permitting process where each change at our facility could trigger a lengthy review and revision of our permit, we will not be able to meet the needs of our customers and we will lose our top position in the marketplace. With so few American business still able to claim a dominant share of a global market, this issue has serious implication for global competition,

For example, if Intel were to react to changing market conditions by greatly expanding production of flash memory chips, we would have to make certain changes within our plant. Even if these changes had no impact on total air emissions, they would trigger a Title V permit revision that could result in delays of several months. In the semiconductor industry, just a couple of months is enough time for our overseas competitors to beat us to the market.

In addition to the problems that Intel faces with permit revisions, it is important to point out that the cost of the initial permit application can be quite high. Due to the amount of information required, Intel spent on the order of \$250,000 to prepare a Title V permit application in New Mexico. This is a significant cost even to a company like Intel. If these costs are multiplied across all of the facilities subject to Title V, the national price tag would be very steep.

Each State in which Intel operates has a different set of air quality regulations in their State Implementation Plans (SIPs). This makes the problem of how best to develop a workable permitting system specific to each State. However, the general conclusion can be made that permits should focus more on environmental results rather than on every minor change made within a facility. This change in focus would make permitting more workable in every State and provide the flexibility needed for economic development.

## POLLUTION PREVENTION IN PERMITS PILOT (P4) PROJECT

In late 1993, Intel, EPA Region 10, EPA Headquarters, the Oregon Department of Environmental Quality and the Pacific Northwest Pollution Prevention Research Center joined together in a partnership to evaluate opportunities to incorporate flexibility and pollution prevention in permits issued under Title V. This partnership provided a unique opportunity for multiple stakeholders to collaborate on a pilot project to develop a facility specific "model" permit that incorporates pollution prevention as a permit condition, provides Intel with the regulatory flexibility it needs to make rapid process and/or chemical changes, and provides for public accountability in the permitting process.

The result of this partnership is a Title V permit for our facility in Aloha, Oregon. The essence of the P4 permit is that it establishes a cap on emissions for the entire manufacturing facility. This means that rather than reviewing each change within the facility, the State would simply evaluate whether or not total air emissions are within the cap. As long as Intel stays within the cap and does not trigger any new regulations, all changes are preapproved. This approach is environmentally protective and fully enforceable under both Federal and State laws, while providing Intel with the flexibility it needs to make rapid process changes. In addition, for the first time I am aware of, this permit includes pollution prevention conditions. These con-

ditions, voluntarily added by Intel, ensure that pollution prevention will continue to be a central theme of our environmental management.

The P4 permit is a significant new development. For the first time, the rhetoric of pollution prevention is being melded into the reality of an operating permit. It takes a major step away from the command and control climate of Title V by re-focusing attention from insignificant process changes to where it should be—environmental results. The bottom line is that the P4 project proves that a workable system can be developed by allowing States and industries the flexibility to tailor a system to their specific needs.

It must be emphasized that the P4 project was not the result of the Title V rules. Rather, the P4 project represents a creative and intensive effort to *work around* the prescriptive requirements of the Title V program. The root of the problem still exists—the command and control philosophy of Title V.

Moreover, the P4 project does not solve the problems of Title V. The development of the P4 project took two years and a tremendous effort from all involved. Also, the P4 project is a pilot effort that may not be adopted by other States. In order for the P4 approach to be more broadly applied, EPA or Congress must send a clear signal that focusing on results, not process, is the preferred approach to permitting.

Intel recognizes that the type of permit developed in the pilot project in Oregon may not be appropriate for all businesses. Nevertheless, Intel believes that by advocating permits such as the one developed for Intel's Aloha facility, EPA can help promote a workable Title V program that ensures public accountability, while allowing the semiconductor and other "quick-to-market" industries the flexibility to make needed process changes. Indeed, the P4 Project epitomizes the best that can come from the concept of "reinventing" government because it harmonizes the global competitive demands on U.S. manufacturers with U.S. environmental regulatory requirements.

### III. GENERAL COMMENTS ON TITLE V

As illustrated by the P4 permit, Intel is committed to a workable system for cleaning up our nation's air. Moreover, Intel's dedication and commitment to the environment has been recognized by several national awards for pollution prevention and environmental improvement. Most recently, our pollution prevention successes in Oregon were highlighted in the Vice President's National Environmental Technology Strategy. Specifically, our new facility under construction in Oregon will double the capacity of our existing plant, yet it will emit 83% less air pollution. This achievement has been accomplished mainly through pollution prevention with minimal use of end-of-pipe control devices.

Notwithstanding our proactive record on the environment, Intel and other environmental leaders are faced with an ever increasing Federal bureaucracy focused not on incentives for encouraging environmental protection, but on strict command and control enforcement and endless paperwork. Rather than recognizing companies for their achievements in the environment, Title V and similar programs, like EPA's enhanced monitoring rule, treat all businesses as if they are environmental criminals. All of EPA's efforts to promote and support pollution prevention are severely undercut by the strict command and control requirements of Title V.

The primary problem with Title V—like many other Federal programs—is that it assumes one size fits all. Of course, one size does not fit all. But, in trying to cover all possible scenarios of permitting every kind of business in each State, EPA proposed a permitting program that would make Rube Goldberg jealous! It is my understanding that EPA is now working diligently to try and retrofit this program with additional flexibility. I fear that EPA's efforts may be too little too late.

Intel believes that the primary goal of the Title V permit program is to gather all of the Federally enforceable conditions that apply to a particular facility together into one document to make compliance more straightforward. Also, a single document for all Federal requirements will help the public and other interested groups find information regarding the facility and its activities.

The problem with Title V is not its intent, but its implementation. One could envision a much less prescriptive approach—like the P4 approach—that provides States with the authority and resources to achieve the same or improved environmental results, maximizes flexibility for industry and States, and minimizes second guessing from EPA.

Most ironic is the fact that Title V may actually have a negative effect on the environment. Review of every change within the facility, regardless of how small, has a chilling effect on companies that are striving to implement pollution prevention programs. If every minor tweak or change within the facility potentially triggers a



lengthy review, permit revision and possible EPA veto, there is a strong disincentive to make these process changes.

Process changes are not only the foundation of all pollution prevention achievements but they are also the building blocks of technological innovation. Congress clearly did not intend Title V to restrict innovation and pollution prevention.

#### IV. POSSIBLE SOLUTIONS

Although Intel, working closely with the State of Oregon and EPA, has demonstrated that a workable Title V air permit for an individual facility can be developed, it is not clear whether this approach can or will be adopted more broadly. Intel continues to work with other States to foster similar permits, but without more flexible rules from EPA, these efforts may not succeed. Even if EPA were to issue a favorable final rule for Title V, the underlying legislation would likely spawn litigation that could reverse the rule. The bottom line is that Congress should consider targeted legislative changes to reduce the red tape created by Title V.

Intel supports ensuring the public accountability of sources by providing notice of major permit changes. EPA's most recent Title V proposal, however, requires advance notice and public comment for so many environmentally insignificant changes that, in addition to impeding a source's flexibility to make needed process changes expeditiously, the proposal actually frustrates its own goal of promoting public participation. The continual public notice and comment required for even minor changes will so overwhelm the permitting system that State permitting authorities, EPA and the public run the risk of missing significant permit changes through sheer information overload.

For example, if my facility in New Mexico made just 30 process changes per year—this is likely a low estimate—we would need a permit revision every other week! Who would review all of these changes? What environmental benefit would be gained by going through all of this paperwork and delay?

At this juncture, Intel urges the Agency and Congress to re-examine the fundamental approach to air permitting with six "common sense" principles:

- First Principle: One size does not fit all. States and regulated industries are very different from one another and cannot be treated as homogeneous groups. It may not be appropriate or feasible for all States to adopt exactly the same process.
- Second Principle: Public Accountability. The public must have access and input to the key decisions in a permit. But public review should be solely focused on important environmental issues and must not become a barrier to industrial flexibility.
- Third Principle: Flexibility. Flexibility is the lifeblood of innovation and pollution prevention. Both industry and States need maximum flexibility to succeed.
- Fourth Principle: Trust. EPA must delegate authority with responsibility. Industry and States cannot operate in a climate of constant second guessing.
- Fifth Principle: Efficiency. Just as industry has finite manufacturing resources, so too, do the States and EPA have resource limitations. Finite resources necessitate that priorities be developed to ensure that the program is focused on the most important *environmental* issues.
- Sixth Principle: Simplicity. EPA has developed a system that is totally inaccessible to all but the most educated and specialized. To be effective, the Title V program must be understandable and clear to all stakeholders.

These principles can guide EPA and Congress to make the needed changes to the Title V program. Specifically, Intel believes that targeted legislative reform based on these principles is needed and should be enacted by this Congress. Such reform would clear away the command and control climate of the current legislation and create a new, more progressive atmosphere where EPA, States, the public and regulated industry could forge partnerships to address the real environmental challenge of air pollution.

In the absence of new legislation to address the problems of Title V, Intel urges EPA to adopt the most flexible regulations possible based on the principles above. In particular, there should be no public notification requirements for minor activities currently subject to registration or standard exemption requirements, unless those activities would be prohibited by the Title V permit itself.

If EPA were to require notification under Title V even for these types of activities, then such notification must incorporate the same flexibility elements inherent in the current registration and standard notification requirements in the State minor new source review programs. Sources should be able to "batch" changes and submit them to the permitting authority on a periodic basis. The permitting authority can publish batch notices to ensure public awareness of any changes in the permit, and to

promote accountability. Such an approach would benefit (1) the permitting authority by reducing its administrative burden; (2) the public by reducing information overload and allowing concentration on the most significant permit changes; and (3) industry by allowing the necessary flexibility to make rapid changes that do not significantly increase emissions.

#### CONCLUSION

Intel's primary concern is the economic and procedural burdens imposed by Title V. We are confident that we meet, and in most cases far exceed, all applicable *environmental* standards. Yet, as explained above, the fast paced nature of our business cannot flourish in a command and control regulatory regime.

I urge the Congress and EPA to fundamentally review the Title V program for the bottom up based on the principles outlined above. As a nation, we cannot continue to develop programs based on an outdated model of federalism that serve to repel innovation and creativity and, in the final analysis, add nothing to the ultimate goal of environmental protection.

Finally, it is important to recognize that business decisions are not necessarily inconsistent or at odds with the environmental goal of reducing pollution. For example, Intel undertakes its aggressive process upgrades, advancements and innovations with the overriding objective of increasing value by increasing productivity. Part of increasing productivity involves reducing pollution. Indeed, pollution is inefficient and simply interferes with the quality of our products and adds costs. Intel believes that a strong economy and a healthy environment are mutually reinforcing goals.

I appreciate the opportunity to testify at this important hearing. Intel has had, and will continue to have, a good dialogue with the EPA and State regulators on these issues. I would especially like to commend the dedication and hard work of EPA's Region 10 staff, EPA's Office of Air Quality Planning and Standards staff and the State of Oregon staff for their successful efforts in developing the P4 permit. I am also heartened by the fact that EPA recently announced that it will re-propose parts of the permit rule and I sincerely hope they will act on our recommendations.

Mr. BARTON. Thank you, Mr. Sheppard for that testimony.  
We would now recognize Ms. Anderson for 5 minutes.

#### TESTIMONY OF LaNELL S. ANDERSON

Ms. ANDERSON. Thank you, Mr. Chairman, and members of the subcommittee. Thank you for the opportunity to participate in the debate concerning the changes to title V.

I am the mother of two children, my son, 27, my daughter, 19. I am also the grandmother of a wonderful baby boy. That is the perspective I hope to bring to you gentlemen today as a citizen living in an extremely polluted neighborhood.

I have a part-time job. I am a member of a citizen advisory panel to industry where we are trying to work things out together. I am a member of Houston Environmental Foresight, which is a comparative risk group in Harris County and the seven surrounding county area. The group includes members of industry, professionals and a good cross-section of all the citizens in our area.

If I could just ask each and every one of you gentlemen to visually step out of your shoes, and the lady, Ms. Eshoo, to step out of your shoes for a moment and to step into my shoes.

Thirty-eight years ago, I moved to our community with my parents, and it was a nice little bedroom community adjacent to Houston. Approximately 15 years ago, industrial facilities began multiplying all around us. Today, we are within a few miles of more than 70 industrial facilities which generate some of the largest amounts of air pollution and particulate matter in the entire United States.

One of the facilities, Exxon, has an estimated total of 49 million pounds of air emissions each year including toxics. According to State records, Shell Oil has produced as much as 33 million pounds of emissions, and Phibro has produced as much as 32 million pounds of emissions. Of course, that is just a very few of the companies. The total air emissions for Harris County is approximately 750 million pounds each year, and it is concentrated in the east end, right in my neighborhood.

I don't know how I could extrapolate that into something we could visually understand, 750 million pounds is a lot. Our rivers and skies are no longer blue. In the evening, the skies aren't black either, they are orange. Many nights we are awakened by seismic rumbling and accompanying noises that preclude sleep.

In our community, we have a great number of ill residents. Illness is what I am concerned with. A lot of the illnesses seem to be autoimmune diseases, mostly diabetes, lupus, rheumatoid arthritis. The residents feel we also have higher than the national average of cancer in our community, and that has been proven.

A great number of residents in our neighborhood are convinced that there is a definite relationship between the amount of emissions, pollution, and their illnesses. Dioxin has been identified by some well respected scientists as causing some of these illnesses and, according to the Harvard Six Cities Study, there is a definite causal relationship.

One of our residents, Ms. Byrd, has serious health problems and, according to her doctor, it is caused by chronic exposure to air pollution. She recently underwent skin grafting, which is extremely painful, to remediate some of these problems caused by this pollution.

I have lost both my parents to environmental issues, ladies and gentlemen, and my two sisters and I have autoimmune diseases, all three different diseases. I have had rheumatoid arthritis for the past 9 years. Eight years ago, I walked with a cane, and I inject a chemotherapeutic drug each week just so that I can stay mobile.

There is a lot of debate going on about what is proof and what isn't proof. I am concerned that changes proposed to title V of the Clean Air Act, as I understand, from a citizen's point of view, will be designed to limit the permitting requirements and may restrict public participation.

Many times, the State agency that I have had a lot of experience with in Texas, doesn't always follow the Federal law, gentlemen and ladies, in terms of compliance. We need the EPA, and we need the Federal oversight.

A positive example that I could offer to you is concerning permitting and public participation is an incident that went on in Texas with American Envirotech Incinerators. I don't know if you are familiar with that.

It was a proposed commercial toxic waste incinerator to be sited in my community less than a mile from another commercial toxic waste incinerator. The applicant was a former employee of the State agency issuing the permits, and she managed to get a lot of the requirements of her permit overlooked, such as financial assurance. This facility was permitted to incinerate heavy metals, such as mercury, lead and arsenic.



We finally, the citizens, contacted EPA, a review of the permit pursued and was done, and subsequent conditions added to the permit which were considered to correct the definite health hazards in our community. Some of the conditions added were 1 year of ambient air monitoring and groundwater monitoring.

Is that excessive? We, the citizens, don't believe so because our health is suffering so badly. I believe it is imperative to continue the permitting rather than striking it down. Some changes, yes. Less bureaucracy, yes. Less compliance to clean air, no.

Our great country has been built on hearing the views of all stakeholders throughout the history of our growth and development. I believe our community needs title V to remain intact. In place is a viable framework which allows stakeholders to have some say over how our lives are affected.

The biggest issue in my view and in many citizens' view is, what is industry trying to change? Just what is it that they are trying to change? I agree, one size does not fit all, but that swings both ways. There are areas, I am sure, where it is overregulated. My area, gentlemen and ladies, I think it is underregulated.

Thank you.

[The prepared statement of LaNell S. Anderson follows:]

#### PREPARED STATEMENT OF LANELL S. ANDERSON

Thank you for the opportunity to place these remarks in the record in reference to the current debate concerning changes to Title V of the Clean Air Act.

I am the mother of two children, my son 27 and my daughter 19. I am also the grandmother of a wonderful baby boy, Alex Payton, who is one year old.

I have a part time job. I am a member of a Citizens Advisory Panel to industry and a member of Houston Environmental Foresight (a comparative risk group in the Harris County and seven surround county region).

Thirty-eight years ago I moved to our community with my parents and it was a nice little bedroom community adjacent to Houston. Approximately 15 years ago industrial facilities began multiplying all around us. Today, we are within a few miles of more than 70 industrial facilities which generate some of the largest amounts of air pollution and particulate matter in the entire United States. One of the facilities, Exxon, has an estimated total of 49,000,000 pounds of air emissions, including toxics, according to State records. Shell Oil has produced as much as 33,000 pounds of emissions and Phibro has produced as much as 32,000,000 pounds of emissions just to mention a few. The total air emissions for Harris County is approximately 750,000,000 pounds for 1993 according to State records. This data does not include small businesses or automobiles.

Our rivers and skies are no longer blue. In the evening the skies aren't black, they are orange. Many nights we are awakened by seismic rumbling and accompanying noises that preclude sleep.

In our community we have a great number of ill residents. A lot of illnesses seem to be auto immune diseases, mostly diabetes, lufts, rheumatoid arthritis. The residents feel we also have higher than the national average of cancer in our community. A great number of residents in our neighborhood are convinced that there is a definite relationship between the amount of emissions, pollution and their illnesses. Dioxin has been identified by some well respected scientists as causing some of these illnesses and according to The Harvard Six Cities Study there is a definite causal relationship. One of our residents, Mrs. Rita Byrd, has serious health problems and according to her doctor her illness is caused by chronic exposure to excessive air emissions from these facilities. She recently underwent skin grafting to try and correct some of the problems.

I have lost both my parents to environmental issues and my two sisters and I have these auto immune diseases. All three different. I have had rheumatoid arthritis for the past nine years and inject a chemo therapeutic drug each week so that I can be mobile. My own doctors have said it is possible that my health problems could be caused by the constant exposure to toxic air pollution.

I am concerned that changes proposed to Title V of the Clean Air Act, as I understand, will be designed to limit the permitting requirements and restrict public participation.

As a resident of a community directly affected by such extreme amounts of pollution and knowing our illnesses may be caused by this pollution, I believe the permitting process must remain open to public participation. My community is one of the most affected in our Country and we believe our health is on the line.

*A positive example I offer concerning Permitting and Public Participation*

American Envirotech Incinerator, a proposed commercial toxic waste incinerator was proposed to be sited in my community less than a mile from another commercial toxic waste incinerator. The applicant was a former employee of the very state agency issuing the permits and she managed to get a lot of the requirements for her permit overlooked, such as financial assurance. This facility was permitted to incinerate heavy metals such as mercury, lead and arsenic. We finally contacted the EPA. A review of the permit was done and subsequent conditions added to the permit which were considered to correct the definite health hazards for our community. Some of the conditions added were one year of ambient air monitoring and ground water monitoring.

Gentlemen, I believe it is imperative to have permitting as well as public participation. Our great country has been built on hearing the views of all stakeholders throughout the history of our growth and development.

Our community needs Title V to remain in place as a viable framework which allows stakeholders to have some say over how our lives are affected on a daily basis. Thank you.

Mr. BARTON. We thank the gentlelady.

We would now recognize Mr. Rentschler for a 5-minute opening statement.

**TESTIMONY OF CHARLES E. MITCHELL RENTSCHLER**

Mr. RENTSCHLER. Good morning, Chairman Barton, and distinguished members of the subcommittee, and thank you for the opportunity to testify today on this critical issue.

My name is Charlie Rentschler. I feel I am representing tens of thousands of America's small business people here this morning. I am President of The Hamilton Foundry & Machine Company founded in Hamilton, Ohio, in 1875, the year before Custer died at Little Big Horn.

We operate foundries in Harrison, Ohio, just west of Cincinnati, and in Decatur, Indiana, just south of Fort Wayne, and provide high paying jobs for 400 people, and make iron castings for diesel engines, heavy-duty trucks, farm machinery, railroad cars, et cetera. We are a basic business underpinning our way of life.

I feel I bring a unique perspective here because I have been so close to the hot pipes for so long. I bought this company out of bankruptcy in the mid-1980's when 12 to 15 foundries each month were closing their doors, and with half of us disappearing since 1980, I feel like an endangered species.

Knowing exactly what it takes to meet the payroll every Friday, I have had to hone my instincts as to what makes sense for my business and what doesn't. Title V doesn't make sense.

While I am unequivocally for clean air, I submit that title V, which defines how industry shall obtain permits to operate, is a seriously flawed program that needs major overhaul if not repeal. Title V mandates that industry apply for permits to operate any facility which has potential to emit air pollution. In calculating potential to emit, applicants must identify each and every possible pollutant in their facility, including how much dust goes airborne when a vehicle pulls across a driveway or a parking lot.



Then applicants must calculate the maximum amount of pollutants that can be generated, assuming: (a) that the facility operates 24 hours per day, 7 days a week, 52 weeks per year; and assuming: (b) that the facility operates without any control equipment whatsoever.

Both of these assumptions are ridiculous. American industry has invested billions of dollars in equipment to control air pollution, like scrubbers, bakehouses, electrostatic precipitators, and the like, and it also, by and large, shuts down equipment for maintenance on a routine planned basis.

So my first point is that title V is based on nonsense. It is asking a myriad of hypothetical questions that will result in meaningless answers, also known as rubbish.

My next concern is the cost of title V to industry and to the taxpayer. I have here a copy of the application from the Indiana Department of Environmental Management. It weighs 2.7 pounds and runs 280 pages. We have only just started working on the Indiana application which isn't due until early next year, but foundries in Wisconsin, which is already past its deadline report that on average the title V response takes 6 man months to complete, costs \$50,000 to \$60,000, weighs 11 pounds, and covers 800 pages of paper.

Ohio has a deadline sometime this fall. The Ohio EPA concluded it cannot handle or store the voluminous amounts of paperwork necessitated by title V, and has disallowed hardcopy applications, insisting we submit the data electronically on diskettes. While this seems to streamline things, OEPA estimates an average application will require 1,400 computer screens.

What an absurdity this is for us. We either hire, as small business people, an environmental engineer or retain a consulting firm. Either way it is going to cost us \$50,000 to \$60,000, and for 6 months they figure out how many angels can dance on the head of a pin.

It is a good thing we are enjoying an economic boom right now, because back in the 1980's and early 1990's the cost of a title V application per se would have driven a bunch of more iron foundries out of business.

What about the taxpayer? We are talking about producing unprecedented amounts of data. Leaving aside the uselessness of the activity, who will process this material?

I think this is called an unfunded mandate. You are creating the environmental version of the WPA. I would remind you that OEPA could not effectively handle MPDES storm water permit applications due to their volume and complexity. Title V is redundant.

The States are effective in regulating air pollution and have comprehensive permitting apparatuses. Faced with the need to cut our Federal deficit and national debt, we don't need to further build government bureaucracy, especially by feeding it garbage.

Title V, moreover, is unreasonable in demanding that industry specify "alternative operating scenarios" in regard to processes and production rates over the next 5 years. If I fail to identify the right "alternative," I go back to square one. I am required to file an amendment and lose that so-called "permit shield" which protects holders of valid title V permits from EPA enforcement.

The system puts industry in a Catch-22. On the one hand, we are constrained by permit restrictions from taking full advantage of potential to expand business, but if we try to compensate for future production increases and forecast higher potential emissions, we are assured of higher permitting fees and increased regulation.

There is also something sinister about title V. It appears to be the first step in a series of regulatory rules toward MACT, which is maximum achievable control technology, which I feel is discriminatory against small business. Title V appears to provide the legal framework for application enforcement of future requirements. In essence, we are being told to build a gallows on which to hang ourselves.

Title V does nothing to produce clean air. In fact, it hurts because it siphons off time, money and management attention. Unless something is done, my environmental manager will spend a year of his life completing our two title V applications when he could be working on safety issues or recycling projects, doing something, in other words, that is constructive.

Instead of title V, we need to let the State's programs continue and flourish, and provide the latitude for business people like myself to make important production decisions shaping our Nation's future.

Thank you, sir.

[The prepared statement of Charles E. Mitchell Rentschler follows:]

STATEMENT OF CHARLES E. MITCHELL RENTSCHLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, THE HAMILTON FOUNDRY AND MACHINE COMPANY

I am here today to talk about Title V of the Clean Air Act. While I unequivocally support the idea of clean air, I submit that Title V—which defines how industry shall obtain permits to operate—is a grotesque statute that needs overhaul, at least, if not, repeal.

Title V mandates that industry must apply for permits to operate facilities which have the *potential to emit* air pollution. In determining whether a facility requires a permit, one determines if the facility's *potential to emit* exceeds a given threshold quantity.

To determine the *potential to emit*, applicants must identify each and every potential source of airborne pollutants in their facilities, including how much dust goes airborne when a vehicle pulls across a driveway or parking lot. Then applicants must calculate the maximum amount of pollutants that can be generated, assuming (a) that the facility operates 24 hours per day, seven days per week, 52 weeks per year and assuming (b) that the facility operates without *any* control equipment whatsoever.

Both of these assumptions are ridiculous. American industry has invested billions of dollars in equipment to control air pollution, and by-and-large, shuts equipment down for maintenance on a routine, planned basis.

It takes a huge amount of time and money to amass such nonsensical data in compliance with Title V. (We have hard facts on this because, given a staggered submission schedule, some states have passed their deadline.) Foundries in the State of Wisconsin are reporting that it takes approximately six man-months to fill out an application and that it costs \$50 to \$60,000 per facility.

The instructions and application form sent us from the Indiana Department of Environmental management, which I hold up in the air before you, weigh 2.7 pounds and run 280 pages.

When complete, the typical application, again based on Wisconsin iron foundries, runs some 800 pages and weighs 11 pounds.

Concluding that it cannot process such voluminous amounts of paperwork, Ohio's Environmental Protection Agency is disallowing "hard copy" applications, instead demanding that data be submitted electronically on diskettes.

While this seems to streamline things, the Ohio E.P.A. estimates that a typical application will require 1,400 computer screens.

Title V, moreover, is redundant. The States are active in regulating air pollution emission sources and have comprehensive permitting apparatuses in place. The systems our States have are proven and familiar. Faced with the need to cut our federal deficit and national debt, we do not need to further bloat Washington bureaucracy, particularly by feeding it garbage information, which is what Title V is asking for.

Title V, further, is unreasonable in demanding that industry specify "alternative operating scenarios" in regard to processes and production rates over the next five years. Failure to identify the "right" alternative will require filing of an amendment to the permit and loss of the "Permit Shield", which protects holders of valid Title V permits from EPA enforcement. Industry, typically, will not want to be constrained by permit restriction from taking full advantage of potential to expand business, but, by forecasting higher potential emissions, assures itself of higher permitting fees and increased regulation over time.

I would argue that Title V does nothing to produce cleaner air. In fact, it hurts, because it siphons off time, money and management attention that ought to be addressing real problems.

Permitting should be the jurisdiction of the States which have demonstrated their capability to manage the process.

Mr. BARTON. Thank you, Mr. Rentschler.

We will now begin the questioning, and I will recognize myself for 5 minutes.

The first question I would have would be for Mr. Carpenter. I was a little confused by your one pound is one pound at the Federal level, but one pound is 100 pounds at the State level. Could you clarify that for me, please?

Mr. CARPENTER. Yes. This is the same issue Mr. Rentschler spoke of, that we are spending about \$15,000 per plant in legal costs and others trying to decide what limits we are meeting are the result of Federal regulation, and what are the limits resulting from State regulation.

If it is a State regulation that requires that control equipment, you have to count the emissions without the control equipment in place, and that was my example of a 99 percent efficient piece of control equipment that would have been one pound if regulated by the Feds, 100 pounds is how you count it because you can't count that control equipment in place if it is under State regulation.

Mr. BARTON. This doesn't make sense to me.

Mr. Sheppard, you indicated that your industry is such a changing industry in terms of technology that the application approval process could literally make many of your decisions noneconomic. I have a two-part question.

You live in a State that has a title V permitting plan that has been approved by the EPA. Could you locate a plant in Texas, right across the border, where it hasn't yet been approved, and not have to wait for approval of these permits since the Federal Government has not approved the State of Texas's title V permit plan?

Go the other way, Arizona or Colorado. I just picked Texas for some reason.

Mr. SHEPPARD. I think what you are asking me, Congressman, is would I locate a plant where I had more flexibility in permitting or a faster track in the process.

Mr. BARTON. States that haven't had their plans approved, do you have more flexibility currently?

Mr. SHEPPARD. I believe so at the current time.

Mr. BARTON. What if you located the plant in Taiwan as opposed to in the domestic United States?



Mr. SHEPPARD. We have been reluctant to do that because we want to continue our manufacturing in this country, but certainly it is becoming more and more difficult.

Mr. BARTON. But if you did, literally, if 2 to 3 months made a difference in getting a product to market simply because of this approval, would it be, at some point in time, an economic variable in where to locate the plant—that is, in the United States versus overseas?

Mr. SHEPPARD. Absolutely.

Mr. BARTON. Now, Ms. Anderson, you obviously come from a part of the country where we have serious air quality problems along the Houston ship channel. We are all very aware of that, especially those of us who live in Texas. I spent one summer on the Houston ship channel, actually, believe it or not, when I was in college. So I am personally well aware of the problems. Of course, this was several years ago.

You are aware that title V does not add air quality standards. It is supposed to be a compilation of all existing standards into one permit, but it, in and of itself, has no additional air quality standards.

Ms. ANDERSON. Yes, sir. I do understand.

Mr. BARTON. Okay. Now I am also told, and you mentioned in your testimony, that you are a member of an area citizens group that includes both citizens like yourself and also representatives of some of the industries that are emitting the toxic materials, the materials into the atmosphere.

I am told that this group is doing a number of risk assessment studies; is that correct?

Ms. ANDERSON. No, sir, that is not quite correct. I am a member of a citizens advisory panel to industry for a particular small group of industries on Hayden Road, which includes Americhem, ISK Biosciences, I forget the other two. This is just a little stressful for me, forgive me.

Mr. BARTON. Well, it is not a trick question.

Ms. ANDERSON. Okay. There are 3 or 4 industries that we are meeting with. That is a fairly recently convened group to address the neighborhood community problems that the citizens feel.

In addition to that, I am a member of a comparative risk assessment group, which covers Harris County and the seven surrounding counties, which also has members of industry from all over that region. It has scientists. We have a science panel, and we have three subpanels, one human health, which consists of about 35 medical doctors, some being Ph.D's in Epidemiology. Another one is socioeconomic, which I have a particular interest in. We have a lot of economists.

Mr. BARTON. My time has expired.

Ms. ANDERSON. And so, yes, we are addressing the region's concerns, and as well as the community's concerns. The one size does not fit all, I truly do believe.

Mr. BARTON. Okay.

Perhaps I may come back for some other questions, but my time has expired, and I would recognize the distinguished ranking member, Mr. Wyden.



Mr. WYDEN. Thank you very much, Mr. Chairman. Mr. Chairman, I think it has been an excellent panel.

Ms. Anderson, if I could start with you. It looks to me like you are a living, breathing monument as to why we need a sensible title V permitting process. My first question to you is, my sense is that the permitting provisions of the act enabled you and your neighbors to get advance information about that incinerator in your community, and then to use the information to get additional public health safeguards put in place before the incinerator began operation.

Could you elaborate on the additional permit conditions that were added to protect public health and what kind of health problems you would have had if those conditions weren't in place?

Ms. ANDERSON. Yes, sir. You may know more than I do about the attempts to incinerate heavy metals such as mercury. It is a big problem. There is no complete thermal destruction, to my understanding, in a dual kiln rotary incinerator of this mercury. It breaks it up into very small microns, gets into the atmosphere, and when it comes down we breathe it. It collects in our pancreas and our liver, and we don't live long when that happens.

So the conditions that were added by EPA were 1 year of ambient air monitoring. From my testimony, you can see that is the problem we suffer the most from. There is no geographical tying of the permits in the State of Texas. So we are inundated in East Harris County with all of these huge amounts of emissions.

Mr. WYDEN. My other question for you, Ms. Anderson, you heard some of my colleagues question why permitting is important. I would be interested in your thoughts, speaking for citizens now, on how important an operating permit is to a citizen's ability to find out what pollution may be affecting their community?

Ms. ANDERSON. Mr. Wyden, I have so many, but to succinctly put it, I would say, we have a lot of permits in place now. There are an awful lot of permits still not in place on grandfathered facilities. Let's talk about grandfathered facilities that don't even have to report their emissions. The 750 million pounds I was talking about is absent the grandfathered facilities. The permitting allows us, the citizens, a vehicle to say, this is making us sick, look at the excess.

Mr. WYDEN. That is the bottom line. I think what people need to understand is that this is a tool for citizens to get information, and we are going to be working very hard on a bipartisan basis, as you suggested, to try to trim the excess bureaucracy here, but the bottom line is, this is a tool for people like yourself to get information to empower your community to deal with pollution, and I very much appreciate your testimony.

Mr. Sheppard, if I might, as you know, it is my view that EPA ought to be cheerleading for the kind of thing that you all are doing rather than dragging their feet. That is the bottom line. I know that you all, as you have been looking across the country, have been going through bureaucratic water torture to try to get this off the ground.

Tell us, if you might, what it would mean to your company if fairly quickly you can have an Oregon-style approach off-the-ground nationwide?

Mr. SHEPPARD. Well, Congressman, as you know, the P-4 permit in Oregon is one permit for one site, and given the fact that the 1994 rule may overturn that, we are very concerned. If we could have a P-4 permit at every site, that would certainly help us with our time-to-market issues.

Mr. WYDEN. But could you give us any kind of sense in terms of what it would mean in terms of cutting that time, that kind of thing?

Mr. SHEPPARD. It would cut it by several months but, more importantly, it would give us the flexibility to make the changes in our process that are so important to our business.

Mr. BARTON. Would the gentleman yield on that?

Mr. WYDEN. Yes.

Mr. BARTON. Is the main benefit of the P-4 permit that you self-certify and then they can come back later, and if you have violated the ambient air quality emission standard, there penalties assessed, but you initially agree to self-certify with the understanding that if you don't there will be penalties assessed later; is that correct?

Mr. SHEPPARD. That's correct, Congressman.

Mr. WYDEN. I am going to hold the record open, with the Chair's permission, he has been very gracious about this in the past, so that if you could tell us in writing what it would mean if you could have this program off-the-ground, say, in the next 6 months or a year nationwide, could you furnish that to us?

Mr. SHEPPARD. We would be happy to do that.

Mr. BARTON. Without objection.

Mr. WYDEN. Thank you, Mr. Chairman.

The last question I had was for you, Mr. Rentschler, and maybe I could squeeze this in. Do you support the basic goals of this program? I mean, I am particularly interested in finding out from industry folks like yourself if you feel like the goal of this program is a sensible one? If we can get to that threshold, then Mr. Barton and I and others on a bipartisan basis can look at the best way to accomplish it. But I am curious, do you support the basic goals of the program we are discussing?

Mr. RENTSCHLER. I support the notion that the Federal EPA should establish a goal, and overarching goal. But I think that the implementation of that, the permitting of that, should be at the State level.

Mr. WYDEN. My understanding is, and that is what we are working for, that we want the States to play a bigger role, and maybe on the second round we could explore that, Mr. Chairman.

Mr. BARTON. You will be given an opportunity. We may not have a full second round, but if there are any questions just burning in your brain, we will get that into the record.

I would now like to recognize Mr. Burr of North Carolina for 5 minutes.

Mr. BURR. Thank you, Mr. Chairman. Just a few brief questions.

Mr. Carpenter, you mentioned earlier that there was a \$15,000 or approximate \$15,000 cost, and I think you referred to it as a legal overview of the plan. Can you expand on that just a little bit?

Mr. CARPENTER. Well, that is what we are estimating per plant, merely to make this determination of what emissions come under

Federal regulations and, therefore, count as actually emitted, and what regulations come under State regulations and, therefore, have to be counted as if those controls that are in place weren't there at all.

Mr. BURR. So that is not to file the plan permit.

Mr. CARPENTER. No.

Mr. BURR. That is just to determine whether it is a State or a Federal jurisdiction?

Mr. CARPENTER. That's correct.

Mr. BURR. What does it cost per permit?

Mr. CARPENTER. On average, and now we are talking an average of some very, very small plants all the way up to some large ones, about \$100,000 will be our final cost on average to submit the first applications.

Mr. BURR. Is that process done with 100 percent in-house people?

Mr. CARPENTER. No, it is not. It is a combination of in-house experts we have on staff as well as consultants and outside counsel we hire to work with us on that.

Mr. BURR. Mr. Sheppard, just over to you very quickly. If title V were remain as is, and let me assume for a second that the P-4 permit was not a part of that, what would happen to Intel?

Mr. SHEPPARD. Congressman, we would see our innovations slowed down. We would probably have to rethink our manufacturing strategies and look to locate plants in other areas. Again, it is important to understand, Congressman, we are not against the public review process, we just need flexibility and we need speed that is consistent with the rate of change in our market.

Mr. BURR. Can your company achieve the EPA standards without the permit process?

Mr. SHEPPARD. Yes, sir. In fact, we exceed them in many cases.

Mr. BURR. Exceed them?

Mr. SHEPPARD. In many cases, but currently meet all of them.

Mr. BURR. If you were to locate a plant today in Taiwan, would the air quality there for your facility be different than one that you place in the United States?

Mr. SHEPPARD. No, our plants, we have a theory in our business called "copy exactly." Every plant we build is copied exactly like its predecessor. The only changes would be improvements to the process. As I said in my oral testimony, we believe pollution prevention is important. It is part of our continuous improvement process.

Mr. BURR. I am going to go to something Mr. Wyden was just on. Let me ask you, has Intel shared with EPA what the P-4 program would mean nationally, and I guess the follow-up question would be, is EPA learning from the advances that your company and other companies are possibly making in the process so that that can be shared with other folks for achievement?

Mr. SHEPPARD. Excuse me just a moment.

Mr. BURR. Okay.

Mr. SHEPPARD. Congressman, we would love to see a P-4 permit model go national, and I should hope EPA, who has worked very hard with us for the last couple of years, and I hope that they are learning along with us.

Mr. BURR. Why did that process, if I may ask, take 2 years?



Mr. SHEPPARD. Sir, I wasn't involved in that one, so I really can't answer that question. I would be happy to submit a written answer.

Mr. BURR. Would you research it and just have it in writing—Mr. Chairman, if that is okay—and send that back to the committee?

Mr. BARTON. Without objection.

[The following information was received for the record:]

RESPONSES TO QUESTIONS OF HON. RICHARD BURR BY BILL F. SHEPPARD, INTEL CORP.

*Question:* Why did it take 2 years to complete the P4 permit?

*Answer:* The Pollution Prevention in Permitting Pilot (P4) project has actually taken longer than 2 years from start to finish. The original idea for this project came from a conference on pollution prevention in the Clean Air Act which was held in April 1993. During this event, officials from both EPA, the State and Intel discussed ways in which the permitting process could be more flexible as well as promote pollution prevention.

Subsequent to that meeting, the P4 project was launched at both our facility in Aloha, Oregon and at another company's facility in Virginia. The project took a great deal of time and effort from EPA, the State and Intel primarily because the concept broke new ground and required all parties to change their thinking about air permits. We were developing the entire title V permitting program at the same time we were developing the pollution prevention approach. Neither of the two had ever been accomplished before. Also, this effort started well before the Title V rules and program were approved, so we were working in a very unclear environment and much of the delay was caused by waiting for the formal approval of the Title V program.

Specifically, Intel had to accept that pollution prevention activities should be part of the permit. Although Intel has been successful with pollution prevention for many years, we have never had these activities as enforceable permit conditions. EPA and the State also had to adjust to allow for advance approval of all minor changes that take place at our facility. The operative draft of the Title V rule seemed to require that all changes go through a lengthy process to revise the permit. Under the P4 concept, all minor changes are pre-approved and the permit does not need to be modified until it is renewed or there is a major change.

Although less significant, another source of delay was the rigid time periods established by the Clean Air Act itself. In fact, as of this writing, the permit has still not been finalized because it is within the 45 day period mandated by the Act for an EPA veto. This veto period is layered on top of the mandated 60 day public comment period and the public hearing (which no one attended) all of which have been completed.

The P4 permit, while a successful example of a flexible Title V permit, is also an example of some of the problems with Title V. The time periods required by public comment, hearings, review and veto's from EPA are extremely rigid. In the case of the P4 permit, arguably one of the more significant permitting actions, this system generated little or no interest from the public.

Public accountability and review is important but should not be achieved at the expense of manufacturing speed and flexibility. Intel believes that you can inform and involve the public and be accountable without a rigid series of review periods. For example, companies could certify compliance with all applicable requirements and citizens or EPA could petition to re-open the permit if and when deficiencies are detected. This kind of mechanism will allow quick-to-market companies to survive while maintaining a sound and accountable environmental management regime.

Again, the two reasons the P4 permit took over 2 years to complete were: (1) ground breaking negotiations; and (2) rigid time periods for review, comment and veto.

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RESPONSES TO QUESTIONS OF HON. RON WYDEN BY BILL F. SHEPPARD, INTEL CORP.

*Question:* What would it mean to Intel to have the P4 model off the ground nationwide?

*Answer:* Intel would be very pleased to have the P4 model adopted nationwide. We have major manufacturing in 4 states and just announced a new facility in a



5th state. In fact, Intel is currently working with the State of New Mexico to implement a P4 style approach for our Rio Rancho facility.

EPA has been helpful in this regard. Since the May 18th hearing on this topic, EPA has taken steps to publicize and proliferate the P4 model. Most significantly, EPA has incorporated this model into the most recently proposed revision to the Title V rule.

One of the more interesting aspects of this proliferation is that it will only affect major sources. Ironically, to get the same type of flexible permit for minor sources—i.e., those that emit less to the air—we will have to convince our State and local government agencies to also adopt this approach.

Mr. BURR. I yield.

Mr. BARTON. Just before I recognize Mrs. Eshoo, what does P-4 stand for, just out of curiosity?

Mr. SHEPPARD. Pollution Prevention—excuse me, if I may just look.

Mr. BARTON. That's two of them.

Mr. SHEPPARD. There are four P's.

Mr. BARTON. The last one is program.

Mr. SHEPPARD. It is Pollution Prevention Pilot Program.

Mr. BARTON. See, I guessed one of them.

Mr. SHEPPARD. Intel uses a lot of acronyms, so we call it P-4.

Mr. BARTON. Well, P-cubed. No, that wouldn't be cubed, quadra-cubed.

The gentlelady from California is recognized for 5 minutes.

Ms. ESHOO. I am not going to get into that one. I am glad you asked the question though. Thank you, Mr. Chairman.

Welcome to each one of the panelists. We appreciate your being here. It is important for each one of us to hear about your individual experiences and how you work with the law, or how the implementation of it ends up working against, in some cases, the very mission that we are trying to accomplish.

First of all, to Ms. Anderson, I agree with you that the public should have input on the air that it breathes. I think that is a pretty important thing. I salute you for what you have chosen to do, and your family and a lot of the people in the community have paid a price for a time when we didn't have good laws on the books, or penalties against those who may not be implementing these laws. So your testimony is very important here.

But the question that I want to ask you is, if overall emissions are capped, do you still believe that the minor process changes that the companies have to go through should still go through a public review process, even if they don't result in increased emissions? I mean, if there is a cap and people are doing what they should do, that permit says, you are capped, this is what you have to do, it is acknowledged that is what they are doing; isn't that what you are looking for as a truly concerned citizen of the community, which you are, I mean you have demonstrated that?

Ms. ANDERSON. The initial answer would be, yes, Ms. Eshoo, but in the way it works out, it is an issue of absent enforcement. That is the key issue. As someone brought up earlier today, industry asks EPA to define their responsibility, and then they litigate forever. I think it is fair to bring up that side of the issue as well.

I understand the industrial side and the cost involved, but I think it needs to be fairly addressed why EPA is under the gun so much from industry and why the costs go up, and that one permit that we opposed in the Channelview area, it was a moving target.

That permit changed monthly. It was an absolute moving target. Changes were made, the citizens didn't have access to the information on the changes, and it was really hard to get a handle on it.

Ms. ESHOO. I appreciate what you are saying, but once the permit is issued and there is a cap—in other words, Intel is instructed by the EPA, you will have this permit and your emissions are capped, and you know that those are the conditions of that permit that, of course, have to be enforced. I mean, you know, if people run through red lights, the law needs to be enforced, right? Then do you believe that once that takes place that there needs to be citizen review?

Ms. ANDERSON. Once the cap is enforced?

Ms. ESHOO. Yes

Ms. ANDERSON. I think citizens need to have access to the knowledge that that enforcement takes place.

Ms. ESHOO. To information, sure. That's fair.

Ms. ANDERSON. I would wish that every industry that was located in Texas would follow Intel.

Ms. ESHOO. Intel, you are right. I have wonderful corporate citizens in my district, yes. I appreciate that. I do.

Ms. ANDERSON. I can see where you are going with that, Ms. Eshoo, and I tend to agree, but I am afraid to agree, if you understand where I am coming from.

Ms. ESHOO. Well, you have not had good experiences, but I just wanted to explore that with you. That is a legitimate statement.

To Mr. Sheppard from Intel, thank you for what you said in your opening comments. Would you really rather have a legislative solution to this? Do you have so little faith that we can get the EPA to build into its rule—in other words, what I said in my opening statement, that the rhetoric match the action words, you would rather go through a legislative process?

Mr. SHEPPARD. Yes, ma'am, I would. I think the last several years has taken too long, and we just arrived with the P-4, which is one permit, and it took 2 years because the Agency was concerned with the details. It cost a lot of money, and it is still not complete, and it doesn't cover the rest of my U.S. manufacturing.

Ms. ESHOO. Well, that is a very important thing. It only applies to the State in which that agreement was negotiated. You can't take that to New Mexico, you can't use it in the 14th Congressional District.

Mr. SHEPPARD. No, ma'am. I can't.

Ms. ESHOO. See how I advertise these things.

Mr. SHEPPARD. I used to live in the 14th Congressional District.

Ms. ESHOO. You are really missing out.

Mr. BARTON. We are going to have to end this lovefest. I hate that.

Ms. ESHOO. You just want to get these businesses away from me.

Mr. BARTON. The gentlelady's time is expired.

Ms. ESHOO. I appreciate that. I think that, if I might just make an observation that, I think that if we don't build the kind of flexibility into, whether it is legislative or administrative, and I would rather go the administrative route, if we don't build it in, then I think overall we are asking for trouble.

I think those that revere the law should really be trying to make it work and make it flexible so that the entire law doesn't come under fire. I really think that is what we are here for today.

So thank you, Mr. Chairman. I appreciate it.

Mr. BARTON. I thank the gentlelady.

Ms. ESHOO. Thank you to the panelists.

Mr. BARTON. I would recognize the gentleman from California, Mr. Cox, for 5 minutes of questions.

Mr. COX. Thank you, Mr. Chairman.

I would like to address my questions to Mr. Rentschler. Your testimony was straight and direct, and to the point. What personnel actions did you need to take in order to comply with title V?

Mr. RENTSCHLER. We decided to hire a full-time environmental engineer, we pirated a young guy from a consulting firm that was working for us. We figured that was probably more cost effective than just going with consulting firms. So, in essence, my small company has a full-time environmental manager on the payroll who will spend a year of his life filling out the two title V applications, one for Ohio and one for Indiana.

Mr. COX. Does the data that he produces have any business use?

Mr. RENTSCHLER. I think it is irrelevant. I think it is gobbledygook.

Mr. COX. So I guess the answer is no.

Mr. RENTSCHLER. No, sir.

And this is a very creative young guy, there are all kinds of things he could do to help us become a more viable business. He is also a safety manager, and foundries are inherently dangerous places. I could go on and on, so it is a total misuse of talent.

Mr. COX. Does he, at least, in the process of filling out all the paperwork, spend some of his intellectual energy figuring out ways to prevent pollution?

Mr. RENTSCHLER. I think there will be some modest spillover but, again, this kind of thing just takes so much time that he really can't focus on anything but that. He is just going to be bogged down.

Mr. COX. But he is actually an engineer?

Mr. RENTSCHLER. Well, he is not a graduate engineer, but he has been the guy around environmental things, and understands all the—

Mr. COX. Paperwork.

Mr. RENTSCHLER. [continuing] all the paperwork, right.

Mr. COX. So from your perspective, you called it gobbledygook. He spends his time filling out forms, that is basically what it amounts to.

Mr. RENTSCHLER. That's right.

Mr. COX. Now, don't companies normally keep track of their energy and machinery use? Is title V imposing an additional burden?

Mr. RENTSCHLER. Most definitely, primarily because of the requirement to figure out these uncontrolled emissions that could occur. In both of our foundries, we invested probably \$1 million to \$1.5 million in the last 10 years, which is a significant chunk of our capital expenditure program, on air pollution control devices. We have alarms on those machines which sound when we do have a failure, and the machinery breaks down. We all know that. But

the bells and whistles go off, and we are proactive. We call the Hamilton County Environmental Protection Agency right away. We do that within 5 minutes of any kind of a failure to notify them, that this bakehouse, or whatever, is down. We shut it down. We are working on it. We have shut our operation. There might be some possible emissions that got into the air, but we try to be proactive, and we are very open and have a good working relationship at the local and State level.

Mr. COX. Does the man that you hired to do this paperwork full-time have to talk to anybody else in the company in order to fill out the papers?

Mr. RENTSCHLER. Definitely. It is very intrusive because he will have to go to the maintenance manager and involve the maintenance manager and his people in taking stack measurements, or the other things that are required here, which, again, have no purpose. I mean, to my way of thinking, it is counterproductive.

Mr. COX. When this is all said and done, does your facility emit any less pollutants as a result of all this effort?

Mr. RENTSCHLER. Not a bit.

Mr. COX. Are there any new legal requirements in this process that wouldn't be there if we didn't have the title V permit?

Mr. RENTSCHLER. I am not sure I understand your question.

Mr. COX. Is there any fundamental environmental law that you follow as a result of being involved in this paperwork that you wouldn't follow if you didn't do the paperwork?

Mr. RENTSCHLER. I don't think so. I mean, we are in compliance with OSHA and EPA today, and this doesn't seem to make much difference.

Mr. BARTON. Would the gentleman yield just for a follow-up?

Mr. COX. Yes.

Mr. BARTON. Are you considered under the definitions of the Clean Air Act to be a "major source" or do you know?

Mr. RENTSCHLER. Sir, we are trying to figure that out, but I think we are going to be a major.

Mr. COX. I would like to use what little remaining time I have with Bill Sheppard, because I know later on when we hear from the EPA we are going to be told that this problem doesn't exist, that it is all fixed, and that the reason it is fixed is Intel.

Yet, I see in your testimony a different strain. To quote, you have said that: It must be emphasized, the P-4 project was not the result of title V, rather the P-4 project represents a creative and intensive effort to work around title V, and the title V program is, itself, the root of the problem because it has a command and control philosophy.

Do you think that the EPA is going to have time to deal with every firm in America the way they dealt with Intel on this cooperative basis? Is there hope for every other small business in America that is not as big as Intel with 23,000 employees so that they can work around title V with the cooperation of EPA?

Mr. SHEPPARD. I seriously doubt it. My concern for the rest of industry is that all companies may not be able to afford to go through what we did working on the P-4. That cost us over a half-a-million dollars.

Mr. BARTON. The gentleman's time has expired.



Mr. COX. I appreciate it, and that last point you made, the half-a-million dollars to work around in a cooperative and "voluntary" way is very, very compelling.

Mr. SHEPPARD. At one plant.

Mr. COX. Thank you, Mr. Chairman.

Mr. BARTON. The chairman would recognize the gentleman from California, Mr. Waxman.

Mr. WAXMAN. Thank you very much, Mr. Chairman.

I thank the witnesses for their testimony today.

Mr. Rentschler, you operate a foundry. My understanding is that many foundries emit a variety of harmful emissions, including particulate matter, lead, cadmium; isn't that correct?

Mr. RENTSCHLER. It runs the gamut. Obviously a brass foundry would have a lot more problems along those lines than an iron foundry.

Mr. WAXMAN. Mr. Rentschler, I also understand that the State of Ohio has a pending enforcement action against your company for illegal emissions; is that correct?

Mr. RENTSCHLER. That has been taken care of, sir.

Mr. WAXMAN. And how has it been taken care of?

Mr. RENTSCHLER. We have fixed the problem.

Mr. WAXMAN. Thank you.

Mr. Carpenter, on page 7 of your testimony, you criticize the EPA for not seeking your input. You state, "It is now the middle of May and we have yet to see EPA's proposal." I want to point out to you that maybe without your knowledge this is an incorrect statement.

We have a copy of an April 20, 1995, letter written by William T. Burkhardt of Proctor & Gamble to EPA. This letter comments on the draft of EPA's new proposal which was shown to P&G and other companies. So, Mr. Carpenter, it isn't accurate then that EPA hasn't even consulted with you?

Mr. CARPENTER. We have been part of a work group that has been working with EPA for years on this. You are right, we have seen a proposal. It said, how would you react if this was what we proposed. It has not been published as a proposed rule. It does not solve the problems that were in the August 4th proposal for us, and we have no assurance that it is what we are going to see as proposed.

Mr. WAXMAN. I appreciate that clarification because your statement simply said, you have yet to see an EPA proposal. So you are being somewhat technical. Maybe they haven't officially proposed it, but they have asked your views, and I would want EPA to ask your views before they make their proposal so that they can take those into consideration.

Mr. CARPENTER. I agree, and we would hope that they would finally react to some of the problems we have been telling them about for years on this thing.

Mr. WAXMAN. Mr. Rentschler, I wanted to ask you about this issue. You mentioned that you unequivocally support the idea of clean air. I wonder if this support extends to areas such as a community's right to know what emissions are coming from a local factory or plant, and what limits are imposed on those emissions. Should States require sources to list emissions from the facility and

the requirements that apply to those emissions in a public document?

Mr. RENTSCHLER. I think within some reasonable boundaries, yes.

Mr. WAXMAN. And do you support allowing the public an opportunity to review and comment on the initial issuance of air permits as well as significant revisions of the document?

Mr. RENTSCHLER. I think that is probably appropriate.

Mr. WAXMAN. Do you think that a company should have to provide assurances to the public that the source is in compliance with all requirements such as an annual compliance certificate?

Mr. RENTSCHLER. Well, that is the present operating scenario, right.

Mr. WAXMAN. Mr. Carpenter, I wanted to ask you the same questions that I just asked Mr. Rentschler. Do you agree with his answers, and do you believe the public has a fundamental right to know what is happening with pollution in the community?

Mr. RENTSCHLER. Yes, and I believe that the fundamental right to know has been adequately satisfied by those States that have had operating permit programs in place before title V.

Mr. WAXMAN. We all agree that the permit process can be improved, but instead of trying to do that legislatively, wouldn't it be faster and more effective for your local facilities to have EPA take prompt decisive action to eliminate the program's unnecessary burdens?

Mr. CARPENTER. Mr. Waxman, time is of the essence for us. Part of title V is in place. The States are implementing those regulations. We are filing permits today. EPA still has not proposed the fixes they have claimed they were going to do last August. We are faced against putting this stuff into place and being ruled under it. So we believe a narrow technical legislative fix is needed this year.

Mr. WAXMAN. Mr. Chairman, I appreciate what this panel had to say. Let me just ask Ms. Anderson if she has any further comments she wants to make. She has heard a number of the points and the questions, and has heard some views. They are not necessarily opposed to yours, but different perspectives from yours.

Ms. ANDERSON. Yes, sir. I am a little concerned as a citizen in reading title V under section 502, it appears to me, Congressman Waxman, that the Administrator has the flexibility and the discretion to promulgate regulations to exempt one or more source categories because of impracticable, infeasible or unnecessarily burdensome issues.

Is that not working in title V?

Mr. WAXMAN. Well, evidently these gentlemen think not, and that is the issue before us, whether EPA is using its good common sense and discretion when appropriate or whether it was not appropriate, or whether we need to change the law, and I think that is the purpose of the hearing. You raise a good point.

Mr. BARTON. The Chair thanks the gentleman from California for those questions.

We are not going to do a complete full round of second questions. We have two more panels, including the distinguished Deputy Administrator of the EPA, yet to go. But I am going to give each member a chance to ask 1 or 2 follow-up questions.

My first follow-up question is going to be on the technical nature of these permit applications. As it is currently interpreted, you cannot be in violation and trigger the repetition of the permit process, so to speak, because of a technical violation in the way you filed the permit. For example, you just don't fill the paperwork out, or you skip a line, or you misspell a name, or something like that. I would think we would all agree that that would be something which could be corrected, that you shouldn't have to go through the entire recertification and comment period if, in fact, it is purely an error of some sort in the way it has been clerically sent in. Would you all agree with that?

Mr. CARPENTER. I would hope we could get to that point.

Mr. BARTON. Especially, Ms. Anderson, would you expect that there be a complete review if, in fact, in that kind of voluminous permit application, there turns out to be some clerical errors?

Ms. ANDERSON. Chairman Barton, some of the clerical errors have really hurt the citizens in Texas, and I would ask you how much of that volume of paperwork is required by EPA, and is that just the permit in those boxes that you are indicating?

Mr. BARTON. Yes, ma'am.

Ms. ANDERSON. That is only the permit?

Mr. BARTON. Yes, ma'am. At least that is what has been presented to me. I wouldn't swear an oath to that because I haven't reviewed it.

Ms. ANDERSON. Well, I have a copy.

Mr. BARTON. A permit application.

Ms. ANDERSON. Right. I have a copy of the application under RCRA for the State of Texas for AEI. It is not nearly that complex or that voluminous. Yes, it is a lot of paperwork.

Mr. BARTON. I am not opposed to there being some sort of a notification, a public notification, if EPA requests additional information or sees a technical error. I am not trying to hide anything. But if you are in a situation like Mr. Sheppard from Intel where a 2-month delay means millions of dollars in lost market share, it seems to me we could agree, we don't have to refile all that and open it all up, just notify that on page 5,032, on line 33, they forgot to sign the correct name. I don't know what the error would be, just don't go through the entire review again.

Ms. ANDERSON. I agree with that. If it is a simple clerical error, it leads into what Mrs. Eshoo was saying. If they meet their criteria, then that is overarching and unnecessary in my view.

Mr. BARTON. Under current law, we need to examine what kind of a mistake in the permit application can retrigger the entire process. I think that is something we need to review.

Ms. ANDERSON. My experience has been, sir, that groundwater was forgotten from a permit, groundwater monitoring and testing. That was completely forgotten. There was the entire issue of a seismic investigation forgotten from a permit.

Mr. BARTON. We are not advocating, at least the chairman of this subcommittee is not advocating, that we let gross negligence go unchallenged.

Ms. ANDERSON. Thank you.



Mr. BARTON. The final question, on this P-4 program, was that a nationwide negotiation or site specific? Was that for the entire company, for one State, or for one site in one State?

Mr. SHEPPARD. Congressman, that was a pilot negotiated in one State for one site, our Aloha Facilities outside of Portland, Oregon.

Mr. BARTON. Okay. Thank you.

Mr. Wyden?

Mr. WYDEN. A question for our three industry witnesses, I have been one who has been concerned about reopening the statute. My sense is that it could really become a pinata for the left and the right, and that instead of having these kind of laser shot efforts that you all are talking about, we will be off to the races in really very far extreme areas that the Congress doesn't want to get to.

My question, and we have already talked about your situation, Mr. Sheppard. We are going to be doing our best to try to help you quickly get this off the ground nationwide, because we understand how great the stakes are, and it would be pretty hard, I think, nationally to legislate a permit, because permits are done through the States, but we want you to know that we think that EPA has been dawdling on this, dragged its feet on this, and that we want to be of some help.

Now, my question to our three industry witnesses is, understand the time table for your recommendation of a legislative fix. You have Congress spending time trying to deal with it legislatively. Then you have an Agency, the EPA, writing regulations. Then you have it go out to the States. We are talking about something that traditionally has taken several years of uncertainty and time waiting to have something resolved.

Mr. BARTON. We do have a vote on. Would the gentleman—

Mr. WYDEN. Yes, I understand that.

Are you all concerned about the prospect of all the additional time delay rather than people like us on a bipartisan basis trying to get the Agency to address some of these concerns like those of Mr. Sheppard and Mr. Carpenter?

Mr. CARPENTER. Yes, we are very concerned because, as I said, these regulations are being implemented today, and we would hope that any legislation looks at the changes you are making and suspends what is there so that we could stay with the existing State programs that were in place. I would urge us to look very hard at what was missing from old State programs and question why they were not satisfactory. I want to remind everybody that there is no one here from industry who is advocating any change whatsoever or any relaxation whatsoever in a substantive control requirement. We are merely talking about paperwork.

Mr. WYDEN. Mr. Rentschler does say, overhaul the act or repeal it. That is like the second paragraph of his testimony.

Mr. RENTSCHLER. Well, but I think that I am in accordance with what Mr. Carpenter just said. It is the paperwork that we are supposed to fill out. Just going through so much effort that is meaningless from our vantage point.

Mr. WYDEN. Well, we are against meaningless paperwork. Mr. Barton and I will agree on that promptly, but understand—

Mr. BARTON. But only meaningless paperwork. Now understand there is a difference.



Mr. WYDEN. You have a legislative fix, and you are talking about a several year period of more uncertainty rather than bearing down, as we have tried to do with Mr. Sheppard, to get things resolved in Oregon so that we can have a model that can be used nationwide.

Mr. RENTSCHLER. But, as I understand it, EPA is what got us into this fix, so why should we count on them and rely on them to unscramble the eggs.

Mr. WYDEN. You got the last word.

Mr. BARTON. Mr. Cox, would you like one follow-up question?

Mr. COX. I would just like to thank our witnesses. We do have a vote on, and I yield to the chairman.

Mr. BARTON. I appreciate that.

Mrs. Eshoo, would you like to ask a follow-up question?

Ms. ESHOO. No. I think that some members have already asked the questions that I would have.

I would just like to thank you, Mr. Chairman, once again, and most especially to the people that have travelled across the country to come and instruct us. I would like to see this thing done on a timely basis. I think that the legislative route complicates things, which is the last thing you need, and we are going to hear from EPA and let's see how we can get this going so that we rebuild your confidence in a good law and make it work for you.

Thank you.

Mr. BARTON. The Chair would announce that this concludes the oral questioning of this panel. We will hold the record open. There will, in all probability, be some written questions we would ask each of you to answer. We do appreciate your attendance and the testimony that you have given, and you are excused.

The Chair would also announce, since there is a vote pending, we will suspend until 12:15 p.m. So we will reconvene with our second panel at 12:15 p.m.

[Brief recess.]

Mr. BARTON. The subcommittee will again come to order.

We will now begin hearing from our second panel. Ms. Karen Olson, the Director of Operating Permits Program for the Texas National Resource Conservation Commission, if she would come forward; and Mr. John Ruscigno, the Program Operations Manager for the Oregon State Department of Environmental Quality.

It is the tradition of the committee that you have the right to be advised by counsel. Do either of you wish to so be advised?

[Chorus of nays.]

It is also the tradition of this committee that we take all testimony under oath. Do either of you have an objection to that?

[Chorus of nays.]

Mr. BARTON. Would you please raise your right hand.

[Witnesses sworn.]

Mr. BARTON. Be seated.

Mrs. Olson, we will begin with you. We accept your statement as a written part of the record, and we would ask you to give an oral summary of it in 5 minutes.

**TESTIMONY OF KAREN N.T. OLSON, DIRECTOR, OPERATING PERMITS PROGRAM, TEXAS NATURAL RESOURCE CONSERVATION COMMISSION; AND JOHN RUSCIGNO, PROGRAM OPERATIONS MANAGER, OREGON STATE DEPARTMENT OF ENVIRONMENTAL QUALITY**

Ms. OLSON. Thank you, Chairman Barton and members of the committee.

My name is Karen Olson. I currently serve as the Director of the Operating Permits Program at the Texas Natural Resource Conservation Commission. I thank you for the opportunity to share on behalf of my agency our experience with some of the difficult title V implementation issues.

We believe that the Federal Operating Permits Program can provide a necessary and important function in improving and maintaining air quality in Texas depending on how it is implemented. The Federal Operating Permit Program can provide the regulated community, the public, the State and EPA with a clear, concise and certain picture of each source's air quality obligations.

In turn, this should result in a higher degree of compliance. Consistent with this perspective, over the past 2 years, we have worked very closely with both the regulated community and the environmental groups in Texas to develop an operating permit program that will satisfy title V and meet the needs of Texas. However, we are concerned that Part 70 has the potential of interfering significantly with the efficient implementation of our program in Texas.

As a participant in EPA's Stakeholders Work Group, we have reviewed EPA's supplemental proposal and consider it a vast improvement over their August proposal. However, we believe that a number of serious problems still remain that must be addressed to ensure implementation of title V in a streamlined and effective manner in Texas, and I would like to address some of those issues in the remainder of my comments.

We believe that one of the problems in the implementation of title V is that there are currently many different understandings of the objectives of title V. As a result there are many different views of the necessary procedural, application and permit content requirements. It is our understanding that the objective of this program is to establish the applicability of already existing standards and regulatory programs to the emission units at a specific site, and that we do that in a permit. It is our understanding that the objective of this program is not to create new requirements nor to delve into the underlying requirements of already existing regulatory programs.

At issue is the interpretation of 504(a), which requires each permit to contain conditions that assure compliance with the applicable requirements of the act, including the requirements of an applicable implementation plan.

So the questions become, what is an applicable requirement, what does it take to assure compliance with those requirements, and do all the requirements submitted into the State implementation plan have to become part of the operating permit?

This is especially problematic for new source review permit programs which have very complex and detailed underlying require-

ments. Part 70 defines applicable requirements to include any new source review authorization and any term or condition of any new source review authorization. It is important to remember that new source review programs have existed for 20 years and have served a valuable but different function from the operating permits.

Because of the different nature of these two programs, we believe the close interrelationship proposed in Part 70 has significantly interfered with the effective implementation of the operating permit program. A question must be asked. That is, should the operating permit be the vehicle through which new source review related changes in authorizations are required to be approved or, at most, should it be used to codify the requirement to obtain the appropriate new source review authorization under existing regulations?

We believe it is the latter, based on our understandings of the objectives of title V, and that new source review programs should be relied on to continue to assure compliance with new source review requirements.

Another area of different understanding is the interpretation of 502(b)(6), which requires adequate, streamlined and reasonable procedures. We support this goal. However, we believe the determination of adequacy should be based on the significance of the regulatory change, not on the quantity of emission increase or any other new source review related change.

Again, we believe that EPA's draft proposal is vastly improved over the previous proposals in this area. However, it still contains a revision process for operating permits that establishes adequacy of public review based on certain new source review activities. We do not believe that this is appropriate.

Finally, we believe that Part 70 should provide broad guidance rather than prescriptive requirements so that States can create effective streamlined programs that meet the needs and compliment existing programs in their State or local jurisdiction.

The draft supplemental Part 70 proposal moves towards this objective. However, we believe this flexibility should be provided in additional areas of Part 70.

We would say that, in general, my agency is encouraged by the progress so far as a result of the EPA meetings held with the stakeholders. We hope for continued progress and satisfactory resolution of the remaining critical issues based on a clear and common understanding of the objectives of title V, and what is needed to satisfy those objectives.

Again, we appreciate the opportunity to provide these comments on a subject that is very important to the State of Texas.

[The prepared statement of Karen N.T. Olson follows:]

PREPARED STATEMENT OF KAREN N.T. OLSON, P.E., DIRECTOR, OPERATING PERMITS PROGRAM, TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

Good morning. My name is Karen Olson, and I currently serve as the Director of the Operating Permits Program at the Texas Natural Resource Conservation Commission. Thank you for the opportunity to share, on behalf of my agency, our experience with some of the difficult Title V implementation issues facing the nation.

We believe that the Federal Operating Permits Program can provide a necessary and important function in improving and maintaining the air quality in Texas, depending on how it is implemented. Within the complex web of both state and federal air regulations, the federal operating permit can provide the regulated community,



the public, the state, and EPA a clear and certain picture of each source's air quality obligations. In turn, this should result in a higher degree of compliance. Consistent with this perspective, over the past two years, we have worked very closely with both the regulated community and the environmental groups in Texas to develop an operating permit program that will satisfy Title V and meet the needs of Texas.

However, we are concerned that Part 70 has the potential of interfering significantly with the efficient implementation of our program. As a participant in the EPA Title V Stakeholder's Workgroup, we have reviewed EPA's preliminary draft supplemental Part 70 proposal and considered it a vast improvement over the August 24, 1994 proposal. However, we believe that a number of serious problems still remain that must be addressed to ensure the implementation of Title V in a streamlined and effective manner. I will address some of those issues in the remainder of my comments.

The key to successful implementation of any program is to establish clearly defined objectives. We believe that one of the problems in the implementation of Title V, is that there are currently many different understandings of the objectives of Title V. As a result there are many different views on the necessary procedural, application and permit content requirements. It is our understanding that, the objective of this program is to establish the applicability of already existing standards and regulatory programs to the emission units at a specific site, in the operating permit, not to create new requirements nor to delve into the underlying requirements of already existing regulatory programs. At issue is the interpretation of 504(a), which requires each permit to contain conditions which "assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan." So, the questions become what does it take to assure compliance with applicable requirements and do all requirements submitted into the State Implementation Plan have to become part of an operating permit?

This is especially problematic for regulatory programs which have very complex underlying requirements, such as New Source Review. Part 70 defines applicable requirements to include any New Source Review authorization and any term or condition of any New Source Review authorization. It is important to remember that New Source Review programs have existed for over twenty years and serve a valuable but different function from operating permits. Consequently, the two programs have fundamentally different objectives, scope of applicability, and substantive requirements. Because of the different nature of the two programs, we believe the close inter-relationship proposed in Part 70 has significantly interfered with the effective implementation of Operating Permits Program. A question must be asked. That is, should the operating permit be the vehicle through which New Source Review related changes and authorizations are required to be approved, or should it be used to codify the requirement to obtain the appropriate New Source Review authorization under existing regulations? We believe it is the latter based on our understanding of the objectives of Title V. We believe that implementation of Title V should maintain the clear distinction between New Source Review programs and the Federal Operating Permits program, and rely on the existing New Source Review programs to assure compliance with New Source Review requirements.

Another area of different understanding of the objectives of Title V and how to accomplish such objectives is in the interpretation of 502(b)(6) which requires "adequate, stream-lined, and reasonable procedures" for processing, reviewing, and providing public notice. We support this goal; however, we believe that this determination of adequacy should be based on the significance of the change in the regulatory requirement, not on the quantity of emission increase or any other New Source Review related change. Again, we believe that EPA's draft proposal is vastly improved over previous proposals in this area; however, some issues still remain. The recent draft of Part 70 proposal contains a revision process for operating permits that establishes the adequacy of public review based on New Source Review activities such as certain netting calculations and potential to emit determinations. We do not believe that this is appropriate. For programs with underlying requirements, such as New Source Review, we believe that those programs have already addressed adequate, stream-lined, and reasonable procedures.

Finally, we believe that Part 70 should provide broad guidance rather than prescriptive requirements, so that states can create effective, stream-lined programs that meet the needs and resources in their states. The draft supplemental Part 70 proposal moves toward this objective; however, we believe that this flexibility should be provided in additional areas of Part 70. The areas include, but are not limited to, insignificant activities, potential to emit, definition of applicable requirement, application content, and permit content.

I would like to say that, in general, my agency is encouraged by the progress made as a direct result of the meetings held by EPA and the Title V Stakeholders.



We hope for satisfactory resolution of the remaining critical issues based on a clear and common understanding of the objectives of Title V and what is needed to satisfy those objectives. I would like to re-emphasize that Part 70 needs to provide states and local jurisdictions maximum flexibility to develop Title V programs which both complement their existing air programs, as well as, promote stream-lined and efficient implementation of Title V.

Again, I appreciate the opportunity to provide these comments on a subject that is very important to the State of Texas.

Mr. BARTON. We thank you for that testimony. We appreciate your testifying within the timeframe.

We would now recognize Mr. Ruscigno. Mr. Wyden is not here, not because he didn't want to hear your testimony, but because he had a speech at 12:15 p.m. to a nurse's association, I believe, from Oregon, so that is why he is not here. But he wanted me to give you his very best wishes and appreciation for your being here.

### TESTIMONY OF JOHN RUSCIGNO

Mr. RUSCIGNO. The State of Oregon would like to thank you for being allowed to submit testimony on the implementation of title V of the Clean Air Act. Based on our experience, EPA Region X's flexibility on several issues has made title V workable and we believe it has tangible environmental benefits.

Oregon submitted their title V program to EPA for approval on November 15, 1993, and received EPA interim approval with an effective date of January 3, 1995. We feel there were some steps Oregon took that have made title V workable for the State and industry while protecting the citizens of Oregon. We feel that some of these steps can be taken by other States to make title V workable and coupled with continued EPA flexibility on several issues will make title V a success.

Immediately after submitting Oregon's proposed title V program to EPA in November of 1993, a pilot program was initiated to work closely with EPA Region X and 12 diverse industrial sources to develop their title V permits as well as permit application forms.

These diverse sources included a Kraft pulp mill, semiconductor manufacturing, primary and secondary aluminum production, particleboard manufacturing, metal can coating and manufacturing, a natural gas compressor station, plywood manufacturing, cement manufacturing, beet sugar manufacturing, heavy duty truck manufacturing, electric power generation, and electronic assembly.

During the pilot program, we discovered several issues that appeared to be showstoppers, but working cooperatively with industry and EPA Region X, we developed some creative solutions to some of these issues. Examples include, identifying applicable requirements, building maximum flexibility into permits to minimize future permit modifications, resolving past compliance issues, and defining insignificant activities.

In the process, we have also identified several existing State rules that presented difficulties and we will be initiating several rule revisions to correct those.

In addition to writing the permits, we also conducted workshops around the State to educate industrial sources and consultants on title V permitting generally and Oregon's application process specifically. Then we assigned each source a specific permit writer who

was available to answer questions and help with the application process.

As a result of all this, we have completed 5 title V permits, are nearing completion on 9 others, and have received a little over one-half of the anticipated applications. By the end of this year, we expect to have collected some 200 title V applications, and issue approximately 37 permits.

One of our real success stories was the title V permit written for Intel Corporation's semiconductor manufacturing facility. That gave the facility maximum operational flexibility by preapproving certain modifications to the facility that required State approval under its minor new source review program. This was coupled with a requirement to achieve offsetting emission reductions through the implementation of a pollution prevention program at the facility.

In another example, the cement manufacturing facility in the pilot group operated a cement kiln that combusts various fuels for its heat source. Rather than specify a finite list of acceptable fuels and require State approval and permit modification before other fuels could be used, the permit was written with a set of criteria any fuel must meet to be used in the kiln, and appropriate monitoring, recordkeeping and reporting requirements to ensure compliance.

This allows the source to take advantage of possible fuels not anticipated in the initial permit application and it protects the environment.

The primary benefits we have seen from title V are in the area of real emission reductions from sources choosing to add control devices or use pollution prevention to keep out of title V, leveling of the playing field by sources discovering and correcting compliance problems, and more accurate information for the State, the industry and the public on the emissions going into the air.

Several sources have also seen benefits by avoiding the title V permitting program altogether. They did this by initiating emission reductions or process changes, or by accepting operational limitations that turned them into nonmajor sources and synthetic minor sources. In Oregon, this resulted in the number of major sources we anticipated having to get title V permits dropping from an original list of 300 to less than 200 sources.

In conclusion, Oregon does not advocate an overhaul of title V of the Clean Air Act. Such a move would be detrimental to our program and undo the progress we have made. We acknowledge that there are some issues needing resolution, but believe they can all be resolved administratively by EPA.

We have found that title V does work for Oregon, and we believe that with continued EPA flexibility, title V will work for others.

[The prepared statement of John Ruscigno follows:]

STATEMENT OF JOHN RUSCIGNO, PROGRAM OPERATIONS MANAGER, OREGON STATE  
DEPARTMENT OF ENVIRONMENTAL QUALITY

The State of Oregon would like to thank you for being allowed to submit testimony on implementation of Title V of the Clean Air Act. Ours is a success story. Based on our experience, EPA Region X's flexibility on several issues has made Title V workable and we believe it has tangible environmental benefits. As proof of that, Oregon has taken five Title V permits through a 30 day public notice period, and submitted the proposed Title V permits to EPA for the required 45 day review. It is our understanding that we are the first state to do this. Based on EPA Region

X comments on the draft permits, we expect to issue these permits at the end of EPA's 45 day review.

Oregon submitted their Title V program to EPA for approval on November 15, 1993 and received EPA interim approval with an effective date of January 3, 1995. Features of Oregon's Title V program that may differ from other states include the five year deferral for permitting of non-major sources and assigning early application call-in dates.

But we feel it was other steps Oregon took that have made Title V workable for the State and industry while protecting the citizens of Oregon. We feel that some of these steps can be taken by other states to make Title V workable and, coupled with continued EPA flexibility on several issues, will make Title V a success.

Oregon initially identified 300 major industrial sources that would be subject to Title V permitting and assigned initial permit writing duties to six engineers. Immediately after submitting Oregon's proposed Title V program to EPA in November of 1993, a pilot program was initiated to work closely with EPA Region X and 12 diverse industrial sources to develop their Title V permits as well as permit application forms. These diverse sources included: kraft pulp mill; semiconductor manufacturing; primary and secondary aluminum production; particleboard manufacturing; metal can coating and manufacturing; natural gas compressor station; plywood manufacturing; cement manufacturing; beet sugar manufacturing; heavy duty truck manufacturing; electric power generation; and electronic assembly.

The pilot program was successful due to a considerable amount of time spent discussing and mutually resolving Title V permitting issues with the permitted sources and EPA Region X. In addition, we participated with EPA Region X staff in Title V permit writing training to other states.

During the pilot program, we discovered several issues that appeared to be showstoppers but, working cooperatively with industry and EPA Region X, we developed some creative solutions to some of these issues. Examples include identifying applicable requirements, building maximum flexibility into permits to minimize future permit modifications, resolving past compliance issues, and defining insignificant activities. In the process, we've also identified several existing state rules that presented difficulties and we will be initiating several rule revisions to correct those.

In addition to writing the permits, we also conducted workshops around the state to educate industrial sources and consultants on Title V permitting generally and Oregon's application process specifically. Then we assigned each source a specific permit writer who was available to answer questions and help with the application process.

As a result of all of this, we have completed five Title V permits, are nearing completion on nine others, and have received a little over one-half of the anticipated applications. By the end of this year we expect to have collected some 200 Title V applications and issued 37 permits.

One of our real success stories was the Title V permit written for Intel Corporation's semiconductor manufacturing facility. In a project titled "Pollution Prevention in Permitting Pilot Project" (the P4 Project) that ran concurrently with our pilot project, Intel, EPA, and Oregon worked as stakeholders in developing a Title V permit that gave the facility maximum operational flexibility. This was accomplished by pre-approving certain modifications to the facility that required State approval under its minor New Source Review program, coupled with a requirement to achieve offsetting emission reductions through the implementation of a pollution prevention program at the facility. These permit elements are included in Intel's Title V permit on an experimental basis for the term of the permit. Because of the significant resources necessary to develop this particular permit, and because it's terms are unique to this particular Intel facility, the exact permit terms will not be directly transferrable to other source types or jurisdictions. However, the concept and approaches to permit flexibility and pollution prevention should be able to be applied on a wider basis.

In another example, the cement manufacturing facility in the pilot group operated a cement kiln that combusts various fuels for its heat source. Rather than specify a finite list of acceptable fuels and require State approval and permit modification before other fuels could be used, the permit was written with a set of criteria any fuel must meet to be used in the kiln and appropriate monitoring, recordkeeping and reporting requirements to ensure compliance. This allows the source to take advantage of possible fuels not anticipated in the initial permit application and it protects the environment.

The primary benefits we've seen from Title V are in the area of real emission reductions, leveling the playing field for permitted sources, and more accurate information on the emissions going into the air. The real emission reductions have come about from some sources choosing to add control devices or using pollution preven-



tion to keep out of Title V. The playing field is being leveled by sources having to take a thorough look at their compliance with existing applicable requirements. Almost every source we've dealt with is discovering and correcting those compliance problems. And we all benefit from more accurate information on industrial emissions. The source benefits as it is better able to monitor its compliance and measure emission reductions, the State benefits as it is able to put together more accurate emission inventories, and the public benefits through realized emission reductions.

Several sources have also seen benefits by avoiding the Title V permitting program altogether. They did this by initiating emission reductions or process changes or by accepting operational limitations that turned them into non-major sources and synthetic minor sources. In Oregon, this resulted in the number of major sources we anticipated having to get Title V permits dropping from an original list of 300 to less than 200 sources.

Oregon also has some existing SIP rules that made Title V implementation even more difficult than what it will be for other states. Oregon's SIP rules include Plant Site Emission Limit (PSEL) rules that require us to establish in every permit a short-term and annual mass emission limit for all criteria pollutants emitted by the permitted source. This is very similar to the Plantwide Applicability Limit (PAL) concept EPA is proposing through its New Source Review Reform effort. This automatically more than doubles the number of Title V permit conditions that have to be written and covered by monitoring, recordkeeping, and reporting requirements. But through cooperative efforts with the source and with flexibility from EPA we were able to resolve these issues and write Title V permits workable for the permitted source, the State of Oregon, and EPA.

While touting our success we should also acknowledge those things that may have made Oregon's transition to Title V easier than some other states:

(1) We have experience in writing operating permits due to an existing state operating permit program; (2) Issuing synthetic minor permits was easier in Oregon due to our existing permitting program being part of our State Implementation Plan; and (3) We have a good working relationship with EPA's Region X office and they make themselves available for discussion and resolution of issues.

In conclusion, Oregon does not advocate an overhaul of Title V of the Clean Air Act. Such a move would be detrimental to our program and undo the progress we've made. We acknowledge that there are some issues needing resolution but believe they can all be resolved administratively by EPA. We have found that Title V does work for Oregon and we believe that, with continued EPA flexibility, Title V will work for others.

Mr. BARTON. We thank you.

Let the record show that Oregon has 200 sources. Some States have a few thousand more than that. It is one of, I think, 11 States that has a State permitting program which has been accepted by EPA. You are one of a handful of States.

Mr. RUSCIGNO. That's correct.

Mr. BARTON. So I certainly don't blame you for your testimony, given that you are one of the success stories.

Mrs. Olson, I am going to recognize myself for 5 minutes, and then begin to ask each of you some questions. I want to ask just kind of a nuts and bolts question. How long have you been the Director of the Operating Permits Program for the TNRCC?

Ms. OLSON. I have been the director of that program since its inception. I was in the New Source Review Program for 10-plus years, and then I began in the New Source Review Program working with EPA when the 1990 amendments came out, and had been involved in those work groups when our agency felt the need that it was time to create a program.

Mr. BARTON. So you are a veteran. You are not a new trainee, a new hire, so to speak.

Ms. OLSON. Yes, sir, I suppose so.

Mr. BARTON. You have been there.

Now, I have to ask one, and this is not directly on point of the hearing, and I apologize for that, and you may not be the proper



person to ask this to, but I do have in my district, in Middlelothian, Texas, three cement manufacturing facilities, and EPA has announced that they are going to conduct a study, I think a 1-year study, an animal study, that apparently is very similar to a study that the TNRCC has just conducted.

Are you aware of that? That wouldn't be in the permit section of TNRCC, but I just wondered if that was something you were aware of?

Ms. OLSON. No, sir. That is not in my area. I know I have heard the term Middlelothian, but that is not an issue that I have worked with at all.

Mr. BARTON. It is off point anyway, but if you were aware of it, I had some questions about that.

Let's get to the point. Here is a permit application over here for a facility not in Texas. Do you think that if and when the EPA approves the permit application process for Texas that a major source pollutant application is going to look that voluminous in our State?

Ms. OLSON. I would hope not, sir.

Mr. BARTON. You hope not.

Ms. OLSON. Of course, some of those issues depend on how the new source review issue gets resolved will certainly affect the size of the applications. But I would not expect our applications to look anywhere like that. We are working very hard to have a streamlined process.

Mr. BARTON. Now you also indicated that based on this shareholder group that you are working with at EPA that the latest draft of their title V regulations have improved but, if I interpret correctly, you don't think they have improved enough. If you were the EPA Czar, what additional improvements might you wish to make in this process?

Ms. OLSON. Well, I guess, fundamentally, to make a general response to that, all the new source review related issues that they have buried into Part 70 ought to be removed.

For example, the fact that you have to codify netting calculation for new source review or synthetic minors into the operating permit. The fact that all the terms and conditions of new source review authorizations become terms and conditions of the operating permit. The fact that you have to do a compliance certification on all those terms and conditions of the new source review authorizations. I could go on with a longer list, but those are some examples of things that we have discussed in the past with EPA.

Mr. BARTON. Now, would it be your position, and I might want Mr. Ruscigno's answer on this also, that once you have your permit plan approved by EPA, that if the State approves the permit there should not be a requirement that the Federal Government also have to approve the permit. In other words, once they have approved your process and it is in compliance with Federal law, there is no need for the EPA official to reapprove a permit that you have approved. Do we need to have two levels of approval? If we are going to let the States operate the programs, should we not accept the State's approval unless there is some egregious reason to disapprove?

Do you see what I am getting at?

Ms. OLSON. Yes, sir. I would say that would certainly be the most streamlined implementation. It is not my understanding that the rule allows for that. There is a 45-day EPA rejection period.

Mr. BARTON. We can change that. Congress can do things like that, if we want to.

How would you comment on that?

Mr. RUSCIGNO. I wouldn't have a problem with that. That would streamline our process also.

Mr. BARTON. Okay.

I think I am going to defer any additional questions at this point in time. I may have 1 or 2 on follow-up, but I would like to recognize the gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to both of the witnesses at the table.

Ms. Olson, is it your view or your agency's view that the problems that are being pointed out today can be resolved administratively or do you think we need to go through the legislative route? Which do you think would be better, and which do you think is doable, which may be two different things, but I would be interested to hear your views?

Ms. OLSON. I guess it is our view that it could be accomplished administratively and that title V has that flexibility provided to EPA.

Ms. ESHOO. Do you think that with the recommendations that you are making that you could point to how emissions would be reduced even more in your State?

Ms. OLSON. Okay, I will try to address that. In the context of title V, it is not our understanding that title V was intended to be a program that reduced emissions as much as a program to make clear to everyone what the rules are that apply, and that people have certainty and comply with those rules. So it is more of an inspection tool.

So we use our New Source Review Program and other air quality strategy programs such as RCRA rules and our nuisance rule, et cetera, to deal with emission reductions.

Ms. ESHOO. To Mr. Ruscigno, we have heard a lot about the success of the P-4, and it is nice to hear about successes, even though it took a long time for that baby to be born. It took 2 years, obviously, in gestation. It is based upon your direct experience with P-4, do you believe that the EPA can issue a regulation in a timely—and I would put that in capital letters with two lines under it and an exclamation point—timely manner which provides flexibility for all industries in all States?

It is kind of a tall order. You know, I have this feeling that the tides are against us, but I would love to hear someone express some faith in that, and then maybe we can pursue it.

Mr. RUSCIGNO. Working through the process, and not just with the Intel permit but trying to get other permits done, we saw a lot of flexibility, and we addressed a lot of problems. We worked closely with Region X to resolve a lot of those.

Ms. ESHOO. Maybe the better question is, having gone through the 2 years, do you think that that kind of timing is necessary in order to bring your experience to the rest of the States, or do you think that we still have to go through what you did in order to

produce this? I mean start-ups, new ideas, and whatever do take some time.

Mr. RUSCIGNO. Two years, the whole process took 2 years, but that is not representative of how long we worked on the problem. We were trying to kick off our whole program and do this pilot project on top of the Intel P-4 project. That was more a reflection of us not devoting a lot of resources to the Intel project. It didn't represent to us a big earthshaking project. We were working on flexibility with all the pilot program sources.

It wasn't a continuous 2 years of trying to figure out how to do it for Intel.

Ms. ESHOO. So we already know how. We already know how. What is missing? What is the missing ingredient here? Is there a lack of will or commitment from—I know this is a tough question for you to answer. I don't want to get people in trouble. But sometimes it is kind of hard to get socks on the octopus. Is it so tough that we can't figure out how to do it?

You have brought forward an experience that has worked, and industry has said that it is working, we are convinced. But we need to make this happen in other places for all the right reasons. What do you attribute to the problem? Why do we have such a problem with this darned thing?

Mr. RUSCIGNO. I think a lot of it came of reluctance from EPA Headquarters to get in the trenches when there were problems, where Region X, their regional office, worked closely with us on trying to resolve these problems, and I am not sure all other States have that same luxury of their EPA regional offices getting in the trenches with them and helping them resolve this.

Ms. ESHOO. You are being a gentleman and a gentle man, and I appreciate that. I think that I am placing you in an awkward position. I just for the life of me can't figure out why there would be resistance to using something that is already working and making it work in every other place, and making a lot of people happy and still making the law work. Maybe I am too much of an optimist or an idealist.

Anyway, I appreciate what you have informed us of, and I salute you for doing what you have done.

Thank you, Mr. Chairman.

Mr. BARTON. Thank you.

We would like the names of these Region X employees. We may encourage them to be promoted to Washington to spread their expertise throughout the country.

I would recognize the gentleman from North Carolina for some questions.

Mr. BURR. Thank you, Mr. Chairman.

Ms. Olson, let me ask a real simple question. I think you answered it, but I want to make sure I understood it. In all the meetings you have held with EPA officials about implementation of title V, how many times did the subject of air quality come up?

Ms. OLSON. How many times did the subject air quality come up in the sense of ambient air concentrations?

Mr. BURR. My understanding of what we are trying to do is, we are trying to achieve a level of air quality. I guess, let me do a fol-



low-up question, in your opinion, is the EPA more concerned with procedure than they are with outcome?

Ms. OLSON. Well, it is hard for me to judge all their thoughts, but I can say that the focus of title V implementation really has been on a mechanism to assure compliance with existing standards to a certain extent, but there are an awful lot of procedures associated with Part 70.

So I don't know if that completely answers your question, but, yes, I think there are a lot of procedural things in Part 70.

Mr. BURR. What do you think the proper role for EPA is in this process?

Ms. OLSON. The proper role for EPA in the process of developing a rule to implement a law or in implementing the program?

Mr. BURR. Achieving what we are trying to achieve.

Ms. OLSON. It is a tough question. I guess I see their role as one of needing to hear, because every State is different, every State has different enabling statutes for their particular air quality programs. Every State has particular air pollution issues that they have to solve. Our issues are different than Oregon's or many other States.

So everybody has their different focus, and so it is an important role that EPA plays to hear that and see that every State is different, and try to develop a rule to accomplish the objectives of, in this case, title V while still recognizing that each State has different objectives and has different programs in place in their State as a result of the different objectives of that particular locality.

So I see their role as seeing all the national differences and trying to develop a rule that allows that kind of flexibility for the States and local programs.

Mr. BURR. Which makes it very difficult for a multistate manufacturer because of the different States.

Ms. OLSON. In that, you are right, that is a tough problem.

Mr. BURR. Okay.

I am going to call you John, if I can, I am not going to attempt that last name.

Mr. RUSCIGNO. That's fine.

Mr. BURR. John, do you believe there is a problem with title V?

Mr. RUSCIGNO. I believe there are several problems trying to implement title V. I don't think there is a problem with the overall intent of title V.

Mr. BURR. You stated that by the end of the year you should have 200 applications of which you anticipate 37 permits to be approved. How long do these other companies wait, what is the time-frame for the approval?

Mr. RUSCIGNO. We have 3 years to issue all the permits.

Mr. BURR. If I can ask, how many employees were added to implement this approval process for title V?

Mr. RUSCIGNO. How many are supported by the program?

Mr. BURR. Yes.

Mr. RUSCIGNO. We have 6 actually writing permits. There is a total of 57 employees that include those 6. So the 6 permit writers and 51 others. It supports a wide variety of activities besides just writing permits.



Mr. BURR. But would I consider from that that there are 57 new employees that are devoted to this?

Mr. RUSCIGNO. No, not necessarily. We are shifting. We had an existing State operating permit program and, as we implement title V, those sources that come under the title V will no longer be subject to the State operating permit program, so the employees are shifting over also.

Mr. BURR. Can you share with us anything about what it cost the State to try to develop the new title V permit program?

Mr. RUSCIGNO. In terms of money and people? By its nature, title V supports itself, so you collect the fees to support the program, so, net effect, it doesn't cost the State anything.

Mr. BURR. Net effect, it doesn't cost the State anything.

Mr. RUSCIGNO. It costs the industry.

Mr. BARTON. The gentleman's time has expired.

I have just a few follow-up questions, and we think Mr. Wyden may be on his way, so we will attempt to give him a chance to question you, Mr. Ruscigno.

This is not a factual question, it is more of an opinion question based on what you said earlier. Is it your opinion that one reason that you have been as successful as apparently you have been in Oregon, is it that Oregon is a smaller State in terms of the number of population and there is a more informal relationship where it is not quite as adversarial as it might be if we were dealing with an EPA in the State of New York, or the EPA in the State of Texas, or the EPA in the State of Michigan, some of the more populous States? Is that one reason you think you have not had quite as many problems is because people are more familiar with each other, and you are willing to try to work through problems instead of adopt a confrontational attitude?

Mr. RUSCIGNO. That was helpful. I am not sure it is tied to size.

Mr. BARTON. Well, it may not be. There are helpful people in populous States, too.

Mr. RUSCIGNO. But that was key to the whole thing working.

Mr. BARTON. The fact that there was apparently a willingness on both sides to try to find a way to solve the problem and not just adopt rigid procedural approaches to it.

Mr. RUSCIGNO. That was key to the whole thing, and it was actually a three-way. It was us and the regional office and the industries that were affected. They were vital in these discussions, too.

Mr. BARTON. And, Ms. Olson, this P-4 program that Intel and Oregon have been able to get approved, would such a program work in a State like Texas with the large number of permits that would have to be administered?

Ms. OLSON. I don't know, sir. I haven't looked at the program, but I have made a note to myself as I was listening to the testimony to speak with John and see if I could get a copy and have our permit engineers evaluate it relative to the program that we are trying to design. So I definitely want to look at it.

Mr. BARTON. The key element is that the industry apparently is able to self-certify and go into production while the actual formal approval, legal approval, is under review; isn't that correct? I mean, you agree beforehand what the standards are going to apply to a source and, if I understood this correctly, then there is agree-

ment that anything a facility does is going to be less than that standard. They fill out the paperwork to indicate a change in operations, but they don't have to wait to go into production while the paperwork is being reviewed. Is that correct or incorrect?

Mr. RUSCIGNO. Yes. If I can put it in my own words?

Mr. BARTON. Put it in your own words, by all means.

Mr. RUSCIGNO. I guess that is what is unique, there is a lot of talk about the P-4, and I think I am the only one in the room who was involved in it, so I know the details.

Mr. BARTON. A knowledgeable witness, the first person. That is unusual in the Congress. We try to not do that too often, but every now and then we slip up and let somebody who really knows something testify.

Mr. RUSCIGNO. We put a plant-wide cap on the facility, and then we define a set of environmentally insignificant changes they are allowed to be made that, based on the wording of our rules, wouldn't usually require department approval before making those changes. It says, as long as you stay under your cap, we are going to preapprove you to make these changes, and in trade for that you are required to implement a pollution prevention program that will be used to make offsetting emission reductions.

Mr. BARTON. But you didn't eliminate the formal paperwork submittal application, and you didn't lower any standard in terms of air quality or emission. You simply agreed before the fact what things could be done, and what levels had to be reached, and then, in essence, put them on their honor that they would do that, and then follow-up with the paperwork and you would review it; is that correct?

Mr. RUSCIGNO. That's correct. A key to it, though, is, every State has a little bit different minor new source review program, so it would depend in other States on how their program is structured.

Mr. BARTON. Okay.

Well, Mr. Wyden is not back. Again, we may have some written questions. We appreciate each of you two State officials for coming and testifying. It is just a coincidence that one is from the chairman's State and one is from the ranking member's State. Sometimes it works out that way. You are excused.

We would now like to hear from our administration witness. We have the pleasure to have the Honorable Mary D. Nichols, who is the Assistant Administrator for Air and Radiation, the U.S. Environmental Protection Agency. We appreciate having you again before the committee.

I think you know that it is the tradition of the committee to give you the opportunity to have counsel with you, if you wish. Do you so wish?

Ms. NICHOLS. No.

Mr. BARTON. Okay. I think you also know that it is the tradition of the committee that we ask that you be willing to testify under oath. Do you have an objection to that?

Ms. NICHOLS. I do not.

[Witness sworn.]

Mr. BARTON. Be seated.

Since you have been very patient, and since you are the administration witness, we are going to give you 10 minutes. You don't

have to take it all, but we are not going to hold you to the 5-minute rule. We would like to hear a summary of your oral testimony, and then we will ask you some questions.

**TESTIMONY OF HON. MARY NICHOLS, ASSISTANT ADMINISTRATOR, OFFICE OF AIR AND RADIATION, ENVIRONMENTAL PROTECTION AGENCY**

Ms. NICHOLS. Thank you, Mr. Chairman. I will try to do it in less than that.

It is a pleasure to be here today to discuss the U.S. EPA's efforts to implement the operating permits provisions of the Clean Air Act. The operating permits provisions were originally proposed by the Bush administration in 1989 in order to better ensure compliance with pollution control requirements by having a single permit for individual sources that includes all of a source's applicable air pollution requirements.

This single permit is intended to increase compliance and, therefore, ultimately to reduce air pollution. Under the program, the owner of the affected source certifies that it is in compliance with the requirements in its permit. Requiring certification by a corporate official creates strong incentives for compliance, and the improved compliance from this program means that States will have an easier time meeting their overall air quality standards.

So far, our early experience with permit applications has shown that compliance is being improved at many facilities. Many States have reported to us that in going through the process of developing permit applications sources have discovered new emissions points and/or other air pollution requirements that apply to them but of which they were not previously aware. Facilities are taking steps to comply with these requirements.

There are other significant benefits associated with the operating permits program, and I would just like to reiterate what they are. Once in place, the program will allow businesses making changes to their emissions to avoid burdensome State implementation plan revision processes. The program provides additional flexibility to industry by allowing the use of plant-wide caps, alternate operating scenarios or other means.

One example of facility-wide limits is the Oregon Intel permit which you have been hearing about today. This permit allows the plant to make numerous changes without having to obtain a new permit. We believe this kind of flexibility will be the hallmark of the permit of the future, and we intend to foster this common sense approach in working with other States and other industries.

In addition, the title V permit program facilitates the adoption of market-based approaches, trading, and other methods of using the market to improve compliance over command and control. It eliminates costly litigation over whether specific controls apply to a facility. It provides an opportunity for local neighborhoods to be informed about decisions affecting their air quality.

Finally, it is an integral part of the Clean Air Act Amendments of 1990 in that it provides a uniform vehicle for State and local agencies to administer other titles of the act, such as the hazardous air pollutant provisions, or the acid rain provisions, and it provides



a mechanism for funding State and local air pollution compliance programs.

Upon promulgation of its rule implementing title V in July 1992, the EPA was immediately sued by environmental groups, industry and States over various provisions. That litigation is still pending. The chief area of controversy concerned the process for revising permits, not the procedures for initially issuing permits.

While no final settlement was reached with the almost 20 litigants, in August 1994, EPA issued a proposed rule describing a new method of dealing with revisions to permits that was an attempt to accommodate the concerns of the various litigants. The result, however, was a proposal that was criticized by everyone as being more complicated and administratively burdensome, and that is criticism with which I agree.

We have since committed to issue a supplemental proposed rule that would significantly simplify and streamline the operating permits revision process while providing an adequate opportunity for public review of permit revisions that do have a significant environmental impact. Simplifying this process was one of the commitments made by President Clinton in his March 1995 regulatory reinvention announcement. We hope to issue our supplemental rule following extensive stakeholder involvement next month.

In developing this supplemental proposal, EPA has worked closely with several States, industry representatives and environmental groups to develop a common sense and hopefully more cost-effective proposal that builds on existing successful State permit programs and achieves a balance between the need for public participation and flexibility for industry.

The supplemental proposal will result in significant savings for business. EPA's initial estimate indicates that the cost of an average revision would be 60 percent less for industry under the process that we are outlining in the supplemental proposal compared with the 1992 rule, and the time involved will be greatly reduced as well.

As businesses are now beginning to develop and submit their initial permit applications, EPA has heard reports about the burden and cost associated with preparing permit applications. It is important to remember that these are one-time costs that are akin to switching from a manual to an electronic recordkeeping system. However, we consider that many of the costly, complicated applications that we have recently heard about are unacceptable. We have found that information being requested by permitting authorities in the permit application sometimes goes far beyond Federal requirements.

In an attempt to address these concerns, EPA has been working with industry and States to develop a series of guidance documents or white papers to clarify areas where paperwork burden can be substantially reduced. The white papers will clarify exactly what information is required by the permit rules, and the first of these will be issued in draft and shared with industry and States and other stakeholders next month.

As we continue to work with stakeholders to address these issues, it is important that we not lose sight of the tremendous progress being made at the State and local levels in implementing



the operating permit provisions of the act. The litigation and controversy relate to a relatively small part of the overall rule. State and local agencies have moved forward to submit their programs, and EPA is reviewing and approving those programs.

To date, EPA has received programs from 46 State agencies and 59 local agencies. EPA has published approval notices for 10 State programs and formally proposed approval for 11 more. EPA has also approved 10 local permitting programs and proposed approval for 24 more. We fully expect that almost every remaining State and local agency will be able to submit a program by November of this year, and we will continue to make progress in approving the program submissions that we receive.

In conclusion, Mr. Chairman, EPA intends to continue working with States, industry and other stakeholders to develop cost-effective workable solutions to implementing this program.

That concludes my statement, and I am happy to answer any questions you may have.

[The prepared statement of Mary Nichols follows:]

PREPARED STATEMENT OF MARY NICHOLS, ASSISTANT ADMINISTRATOR, OFFICE OF  
AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good Morning. It is a pleasure to be here today to discuss the U.S. Environmental Protection Agency's (EPA's) efforts to implement the operating permits provisions of the Clean Air Act. Despite the fact that there have been some growing pains and some controversy associated with such a new program, over the past five years, states and local agencies have made great progress in implementing the program.

The operating permits provisions—known as Title V—were originally proposed by the Bush Administration as part of what became the Clean Air Act Amendments of 1990. The Bush Administration and the Congress added the operating permit program to the Act in order to better ensure compliance with pollution control requirements by having a single permit for individual sources that includes all the source's applicable air pollution requirements. This allows better tracking of compliance and, ultimately, an improved environment.

The operating permit program provides for the first time that all the federal and state air pollution control requirements be incorporated into a single document. The owner of the affected source must then certify that it is in compliance with the requirements in the permit. By requiring certification by a corporate official, the program gives company officials the opportunity to be fully knowledgeable about their compliance obligations and creates strong incentives for assuring that compliance is maintained. At the time the operating permit program was included in the Clean Air Act, EPA data showed that some state rules were achieving no more than, and in some cases less than, 80 percent of the expected reductions in emissions which we believe was due to non-compliance. The operating permit program will substantially improve compliance with existing regulations, which in turn will result in improved air quality. These improvements mean that states will not have to adopt new regulations to meet air quality standards to make up for noncompliance with existing rules.

Our preliminary experience with permit applications has indeed shown that compliance is being improved at many facilities. Many states have reported to us that in going through the process of developing permit applications, sources have discovered new emission points and/or other air pollution requirements that applied to them but of which they were not previously aware. As a result these facilities are taking steps to comply with those requirements.

Another benefit of the permit program is that it provides opportunities for the public to be informed about decisions concerning emissions from factories in their neighborhoods. It allows the public to know what requirements a facility must meet, and allows the public a meaningful opportunity to comment on significant changes to the permit of a nearby major facility.

Also, by identifying all the requirements a facility must comply with, permits will avoid unnecessary controversy as to whether a given requirement applies to that facility. This benefits industry by negating the need for costly litigation to resolve such controversies.

As being developed by EPA, the permit program also offers benefits to industry by allowing creation of flexible permits that create plant wide caps, include alternate operating scenarios, or provide advance approval of new units or modifications. This kind of permit design can potentially save substantial time and money over the previous system where many process changes had to be approved through lengthy changes to state implementation plans.

One example of facility-wide limits is a permit being developed cooperatively among EPA, the State of Oregon, and Intel Corporation for an Intel facility in Aloha, Oregon. The facility-wide permit will allow the plant to make numerous changes to its processes without having to obtain a new permit. We believe this kind of flexibility will be the hallmark of the permit of the future and we intend to foster this kind of approach with other industries. In fact, as part of Administrator Browners Common Sense Initiative, EPA has established a Permits Improvement Team that is holding meetings with stakeholders across the nation to discuss permit related issues. From those meetings it is clear that many industry representatives strongly support the concept of a single, cross-media permit that would incorporate all of a source's environmental obligations into a single document. This idea of a single, multi-media permit is also an important part of President Clinton's regulatory reinvention initiative. The consolidated permit for air regulations that we are discussing today is an important step towards meeting that goal.

Another major benefit of the operating permit program is that it greatly facilitates implementation of market-based trading programs by aiding facilities to use trading as a means of compliance and eliminating the need for sources to go through time-consuming amendments to their state implementation plans to make a trade.

In fact, another major reason the permit provisions were included in the 1990 Clean Air Act was to eliminate many of the time-consuming, administratively burdensome processes that a business is oftentimes subjected to if it wants to make a process change that would alter its emissions. Under the current state implementation plan system, the business in question would have to go through a state regulatory process with public comment and review, and then through a similar process at the federal level. Each of these processes can take months and sometimes even years. However, once it is up and running, the permit program will greatly accelerate this process—business will only need to go through a single significantly streamlined permit revision process at the state level.

The permit program is designed as an integral part of the Clean Air Act in that it provides a uniform vehicle for state and local agencies to administer other titles of the Act, such as the substantially revised provisions to protect the public from harmful hazardous air pollutants. In fact, the permit provisions were included in the 1990 Clean Air Act to bring it up to date with other national environmental legislation, such as the Resource Conservation and Recovery Act and the Clean Water Act that had successfully used permits as an administrative mechanism for determining compliance.

A final benefit of the operating permits program is that, unlike some federal law, it provides states and local governments with a specific mechanism for funding their compliance activities. This common sense funding approach—based on the polluter pays principle—will provide sufficient funding to operate the state or local permit program. This, in turn, enhances the ability of the state and local agencies to be more responsive to business and the public.

EPA issued the permit rule in July 1992. Upon promulgation of the rule, EPA was immediately sued by environmental groups, industry and states over certain provisions. The chief area of controversy concerned the process for revising permits—not the procedures for initially issuing permits. Industry concerns include delays caused by the revision process. States and industry were concerned about costs and the additional paperwork burden associated with a revision process that potentially duplicated existing state programs. Environmental groups and some states contended that the rule failed to provide adequate opportunities for public participation in the permit revision process. While no final settlement was reached with the almost 20 litigants, in August 1994 EPA issued a proposed rule describing a new revision procedure that attempted to accommodate the litigants varying concerns. The result, however, was a proposal that was criticized as being more complicated, and administratively burdensome.

After further discussions with a broad group of stakeholders, EPA agreed with many of the criticisms of the proposed rule. We have committed to issue a supplemental proposed rule that will significantly simplify and streamline the operating permits revision process, while providing an adequate opportunity for public review of permit revisions that have a significant environmental impact. In fact, simplifying the operating permits revision process was one of the commitments made by

President Clinton in his March 1995 regulatory reinvention announcement. We hope to issue our supplemental proposed rule next month.

In developing this supplemental proposal, EPA has worked closely with Ohio, Louisiana, Texas, Minnesota, California and other states (including the National Governors Association, the Environmental Council of States, and state and local air pollution control administrators) to develop a common sense proposal that builds on existing successful state permit programs. We have also worked with industry representatives and environmental groups to attempt to achieve a balance between the need for public participation and the need for flexibility for industry. We have held several detailed discussions with all key stakeholders and shared a draft of the rule with them. We have received detailed comments from many of those stakeholders and are working very hard to respond to them in our supplemental proposal.

The supplemental proposal will include a greatly simplified two-track system for permit revisions. It will give states much greater flexibility to decide the amount of public review for most permits by matching the level of review to the environmental significance of the change. A state would not be required to provide any review for changes that it can show to be *de minimis*. EPA's supplemental proposal will include other clarifications that will enable states to build upon their existing permit programs rather than create additional duplicative processes. For changes that are the most environmentally significant, review by the public, EPA or other affected states would occur prior to the construction of a project. This is where state review already occurs and will allow full up front participation when comments are most readily accommodated.

The supplemental proposal will result in significant savings for business. EPA's initial cost estimates indicate that the cost of an average revision would be sixty percent cheaper for industry under the process outlined in the supplemental proposal compared with the July 1992 EPA rule. The number of business days lost to delays in obtaining permit revisions would be reduced by about 30 times over the July 1992 rule.

EPA continues to work with stakeholders on a number of other fronts as well. Industry and states have raised several concerns about any enhanced monitoring that may be required in association with the operating permit program. They were concerned that EPA's enhanced monitoring rule would add costly and unnecessary additional monitoring burdens for affected facilities and make existing rules more stringent. EPA concluded the controversy surrounding the rule would make it impossible to implement as proposed and has decided to pursue a different approach from that set out in its proposed rule. We intend to work with industry, states and other stakeholders to develop a more cost-effective approach to assure compliance by building on the requirements of existing rules.

Industry and states have also been concerned about smaller sources that have the *potential* to emit enough pollution to be regulated as a "major" source, though they do not actually emit that level of pollution. In January of this year, EPA issued a policy recognizing a two-year grace period for sources actually emitting less than 50 percent of the major source threshold amount (even though they may have the potential to emit much more). Such sources would not have to obtain a permit if they keep records of their operations. In most cases such records will relate to the amount of materials used or processed and should not require any new record keeping. EPA is giving serious consideration to permanently extending this provision for sources emitting less than the 50 percent cutoff.

As we continue to work with states, industry and other stakeholders to address issues they raise, it is important that we not lose sight of the tremendous progress being made at the state and local levels in implementing the operating permit provisions of the Clean Air Act. The litigation and controversy relate to a relatively small part of the overall rule; state and local agencies have moved forward to submit their programs and EPA is reviewing and approving those programs. To date, EPA has received programs from 46 state agencies and 59 local agencies. EPA has published approval notices for 10 state programs and formally proposed approval for 11 more. EPA has also approved 10 local permitting programs and proposed approval for 24 more. EPA has published a disapproval notice for one state. We fully expect almost every remaining state and local agency to submit a permit program by November of this year and we will continue to make progress in approving the program submissions we receive.

Once EPA approves a state or local program, the next step in the process is for industry and other affected sources to submit permit applications to the state or local agency for review. The agency then issues the permit to the source. We are now at the stage where the various sources are spending a good deal of time and effort pulling together their permit applications. As this has occurred, EPA has become aware of reports about the burden and cost associated with preparing certain



permit applications. In one respect, it is important to remember that these are one-time costs that are akin to switching from a manual to an electronic record-keeping system. However, having said that, we are very concerned about some of the applications we have heard about. While large facilities with hundreds of different emission points, such as some chemical plants or refineries, could be expected to have sizeable applications, EPA considers some of the costly, complicated applications we have recently heard about to be massive overkill. We have found that information being requested in the permit applications sometimes goes far beyond federal requirements. We have also found in some cases excess and unnecessary information is being included in applications on the advice of some consultants who are preparing the applications.

In an attempt to address these concerns, EPA has been working with industry and states to develop a series of guidance documents or "white papers" to clarify areas where the paperwork burden can be substantially reduced. The white papers will clarify exactly what information is required by the permit rules. For example, it will address the extent to which an application needs to document emissions, and provide flexibility in measuring or reporting trace amounts of emissions, and in what must be filed to have a complete application in cases where a permit may not be issued for a year or two. The first of the white papers will be issued in draft next month.

Mr. Chairman, before I conclude I would like to make one last point. Criticism from some in industry about this rule is not surprising. Because this program helps ensure compliance with existing regulations and makes it easier to determine if a source is in compliance, it was never popular with certain industry groups—even before the Act was signed into law. As someone with 25 years of experience in the Clean Air arena it does not surprise me that some in industry would complain about the prospects of having to certify compliance with all of the regulations that apply to them. On the other hand, there are some legitimate concerns that have been raised about issues like flexibility to make industrial process changes and the paperwork burden associated with permit applications. We are working very closely with state, industry and other stakeholders to address these issues. I hope that the Committee will support these efforts.

In summary, despite the difficulties that are always experienced when setting up a new program of this magnitude, real progress is being made in implementing the programs in the states. We believe these programs will significantly enhance compliance with air pollution regulations across the nation, improving air quality and increasing the effectiveness of existing air pollution control programs. EPA is committed to continue working with states and industry to streamline and simplify the requirements associated with the operating permits program and develop a common sense program that works for everyone.

Mr. Chairman, this concludes my written statement. I would be happy to answer any questions you may have.

Mr. BARTON. We are not going to hold to the 5-minute rule on questions. We have our administration witness, and we want to give everybody an opportunity.

The first question that I have is, to your knowledge, how many people at EPA either in Washington or at the regional offices or contractors that you may employ are involved strictly with developing the regulations for title V and overseeing its implementation? Do you have an idea?

Ms. NICHOLS. It would be within the headquarters, in addition to a small group within the Office of Air Quality Planning and Standards, and I really mean that is a handful of people, I can think of their names, we also—

Mr. BARTON. So that is less than 100?

Ms. NICHOLS. I would say, if you added together the full-time staff involved in the program, it would be less than 100.

Mr. BARTON. Okay.

Ms. NICHOLS. In addition to the assistance that we receive, of course, from other offices, such as the Office of General Counsel, or Enforcement on these rules. Then in the regional offices—I couldn't venture a guess, because I think it differs, as do the num-



ber of sources by region, but it wouldn't be significantly more than that.

I would be happy to provide that information.

Mr. BARTON. It is not fair to ask you that just off the top of your head, but could you for the record try to determine how many people that are directly employed by EPA or contracted by EPA to implement review and regulate this part of the act. I would appreciate that.

My second question, according to the information I reviewed last evening, of the 50 States, there are 11 States that have had their title V permitting programs accepted, and the others are in various degrees of review. Do you have any information for this subcommittee about when the States that have not had their permit application programs accepted when they might?

Ms. NICHOLS. My understanding is that they are all on-track to be approved and, in the interim, to receive, once they are found—

Mr. BARTON. Could we get a little more definition than on-track? I mean, is that next week, next month, next year, next decade, next century?

Ms. NICHOLS. The first step is to find the permit program complete, and then to propose approval. Once the program has been found complete, the States can begin relying on it. I had some figures which I will look for, in fact, in a moment.

Mr. BARTON. As long as they are submitted for the record expeditiously.

Ms. NICHOLS. Mr. Chairman, I just had a note slipped to me, I think this is no different than what I said to you, what I had heard when I checked on this within the last day or so was, we believe that they would all be in a position to be approved by November.

Mr. BARTON. All, this is important, of the State permit programs for title V that have not been approved, and according to my records we have 11 that have, all the others should be approved by November.

Ms. NICHOLS. Correct.

Mr. BARTON. That's good. Okay.

My next question, and I am not an expert on the Clean Air Act and certainly not on title V. I am going to ask you some very basic questions because I want to really understand this. Now I am told that this is the Part 70 part of the title V that has been approved, and it was approved in 1992, so that this is the law of the land. These are the regulations that States are supposed to comply with to comply with title V; am I correct in that?

Ms. NICHOLS. Well, I can't see if that is.

Mr. BARTON. If what I am telling you is true, we have to go on faith that what I am saying is true, that this isn't the funny pages or something up here.

Now, is this what so many lawsuits were initiated over?

Ms. NICHOLS. Yes, although they focused primarily, as I said, on the permit revision portions. There was very little attention paid to the other aspects of the program.

Mr. BARTON. As a consequence of what happened when this was put out, you have gone back and looked at it, and I am told that this is a revision that came out in August 1994 that is a revision or a supplement to what came out in 1992. Again, if what I am

saying is correct, you can't read it, but it says "Operating Permits Program Rule Revisions FLR-5053-2 Proposed Rules," so this that came out last summer; is that correct?

Ms. NICHOLS. That's correct. It was intended to be a settlement or a partial settlement of the litigation.

Mr. BARTON. As a consequence of this being in the public domain, you have now created these—I think you used the phrase—stakeholder groups, and they are in the process of working their way through these regulations or proposed regulations, and you hope to have a final draft or a final supplement that is agreed upon and certified by when?

Ms. NICHOLS. The intent, Mr. Chairman, is to put out a proposal for the Federal Register next month that would supersede that document, the second document that you held up, and would then go into effect when it became final, which would be approximately 3 months later.

Mr. BARTON. So you are going to put out, another document to supersede this document next month, and then there is a 60-day comment period, and at the end of that comment period, assuming that the comments are not totally negative, you may actually promulgate a regulation, put it into effect?

Ms. NICHOLS. That would be the intent.

Mr. BARTON. So by September we will have the final version of this; is that correct?

Ms. NICHOLS. That would be the hope.

Mr. BARTON. If my math is correct.

Ms. NICHOLS. Yes.

Mr. BARTON. In all of this that is underway now, according to the first document that is currently the law of the land, or the rules and regulations that implement the law of the land, we have had some horror stories. Now I didn't try to embarrass anybody today. The most embarrassing thing that I have done is with this one permit, and it is probably too cute, but I want to ask you some questions.

Based on what I have been told, under current regulation there are employers that in their permit applications have to account for the emissions from weed eaters. Do you think that is really the intent of title V?

Ms. NICHOLS. Let me answer the question this way, if I may, because the term "weed eater" obviously—

Mr. BARTON. Well use the term "weed whacker," if you don't like "weed eater."

Ms. NICHOLS. Whatever. The question is, what has to be covered in a title V application, and the answer to that is, whatever the applicable rules for that source are. Now, I personally don't know of any industries that have to use them.

Mr. BARTON. If you are a major source or emit over certain levels, you have to fill out one of these applications. As the Assistant Administrator, do you think they have to try to find out how many weed eaters they are using to keep the weeds down around the perimeter of the plant?

Ms. NICHOLS. Only if the State that they are operating in and that granted them their original permit has a program that says that that is a requirement that they are subject to.

Mr. BARTON. So you are going to put that on the State?

Ms. NICHOLS. I am, indeed, going to put that on the State.

Mr. BARTON. You would be more than willing to stipulate that if you could make the decision, you don't care how many weedwhackers they have?

Ms. NICHOLS. The only thing that I care about is that the title V permit contain the applicable requirements in one place, whatever they are. It is not my job to set those requirements.

Mr. BARTON. Okay. But if it were your job? I am not being argumentative with you, but you are the top person directly below Mrs. Browner, and there apparently are instances of this that we could have brought forward, and we chose not to do so. We want to make sure that we have a good permit system, but do you believe you should go to the detail of some of the minutia that apparently has had to be gone to in some of these applications, and this is admittedly an extreme example of that.

Ms. NICHOLS. You have asked in a way two different questions and, if I may, I would like to separate them. One is, should the State have a requirement that sources have permits that list things like weed eaters, or whatever.

Mr. BARTON. And I would answer that no.

Ms. NICHOLS. That is an issue that we believe is a matter of State law if a State decides that a source is required to cover that.

Mr. BARTON. I will stipulate that it may be a State problem, but if it were your decision as a policymaker to rule on that, would you say, count weed eaters?

Ms. NICHOLS. If it were my decision and I were issuing the permit, I would say no.

Mr. BARTON. That's fine. That is all I needed was a yes or no answer. Now I have three more like that, but I am going to assume that we would go through the same song and dance and end up at the same place.

Ms. NICHOLS. Well, could I just say one other thing about that, though, if I may?

Mr. BARTON. Yes, ma'am.

Ms. NICHOLS. Because I think it is important, it gets back to the fundamental question of what is this title V permit supposed to be, and I just want to reiterate that, as the Federal official implementing this program, my job is to protect both communities and sources by having there be one permit that does list whatever those requirements are.

So the question is, should the State have a requirement that lists everything regardless of how insignificant the emissions are, I would say no. But if the question is, should the permit list in one place whatever those requirements are, I would say yes.

Mr. BARTON. And I agree with that. The intent of title V is to bring everything into one place, and I support that.

Could you quickly, my red light has gone off, comment on the P-4 program that apparently is working well with Intel in the State of Oregon? Is that an approach that you would want to encourage in other industries in other parts of the country?

Ms. NICHOLS. Yes. As was indicated earlier when I listened to the earlier testimony, the regional office of EPA worked closely with Intel and with the State on developing that program. It goes

beyond just title V. It is a whole approach to pollution prevention, which we also are very enthusiastic about. But we, in fact, have a plan and a program in place to take that permit and to get it out to other States as a model that they can work with.

Mr. BARTON. Would you be willing to allow the State of Texas to take a look at it, just as a State out of the blue?

Ms. NICHOLS. Absolutely.

Mr. BARTON. Finally, I asked the industry panel, when you look at that permit application under the current rules and regulations, if they have not done everything administratively and clerically correctly, they may have to resubmit that and restart the clock. Are you willing to consider, if we don't adopt a legislative fix, some changes that we don't have to go through the formal review program so long as it is an honest clerical mistake, or something like that?

Ms. NICHOLS. Yes, Mr. Chairman. I believe that under the current regulations that are in place, we would be allowed and a source would be allowed to amend its application to take care of any errors that they had made that were of the nature of either a clerical error or just a mistake, they could fix that.

Mr. BARTON. Thank you.

My final question, before I recognize Mr. Wyden, I asked the State officials about the requirement, did they think it would be appropriate, if they approved the permit and then submitted it to EPA, that based on the State approval, it did not have to be so-called, and it is my terminology, "reapproved" at the Federal level.

In other words, once the EPA has said that your permitting program is acceptable, then the States would accept permits and would review them and then would approve or disapprove, but once approved they wouldn't have to be reapproved at the Federal level unless, by some petition process, somebody alleged that the approval was incorrect, or the normal audit that you would always have the opportunity to do?

Ms. NICHOLS. Yes, Mr. Chairman. The supplemental proposal, which I indicated is expected to be out next month, will make clear that any permit that was issued under an adopted program would not be reviewed by EPA during the 45 period.

Technically, EPA doesn't actually approve permits. We do have, under the law, a right of a veto, but we would waive that right except in instances of environmental significance, and we would expect that to be used rarely unless there was a petition, as you indicated.

Mr. BARTON. I thank you, and I would recognize the gentleman from Oregon for such questions as he may ask.

Mr. WYDEN. Thank you, Mr. Chairman.

Ms. Nichols, more than anything, we want to try to convey the seriousness of what is at hand. You have companies like Intel, for example, who clearly support the philosophical underpinnings of the law. They support the intent of the law. They think the goals are sensible. Yet they have gone through so much water torture trying to get this resolved they now come to the Congress and say they want to change the statute.

So that is the backdrop, it seems to me, that you are faced with, and I guess the first question I want to ask is, what exactly is EPA



going to do in the new title V rule that is going to come out next month that will explicitly deal with the kind of problems we have heard about today with Intel?

Ms. NICHOLS. The supplemental proposal is primarily designed to make it easier for sources to make changes without going through any further process under title V, and there are a number of different mechanisms that are included to make it easier for sources either to be out of the system altogether, or once they are in the system to establish a plant-wide limit, such as was done with the Intel permit. This would then allow them to make any changes within the facility without having to go through any further additional process before they make those changes.

There would be a limited time period in which there could be a review after the fact, but then any changes would have to be made going through the permit process, and would not hold up the source in making any changes that they wanted to make.

The principal effort here is to try to balance the title V provisions for public review with the obvious need of companies to be able to operate their businesses without having to go through a lengthy process of review.

Mr. WYDEN. So what you have described, it seems to me, is what is available, not what you are going to do to explicitly encourage it.

Ms. NICHOLS. Well, let me maybe go a little bit further. The proposal itself makes the regulations clearer in terms of what States can do and should do. What we at EPA need to do, I think, a better job, and what we hope to do through a combination of electronic bulletin boards, meetings with industry groups, guidance, et cetera, is to make it clear to States and industries how they can fix their title V programs to make them work this way.

Mr. WYDEN. Is it fair then to say that in 6 months companies are not going to be having these kinds of problems that Intel is talking about?

Ms. NICHOLS. Well, I certainly hope so. We think that within 6 months we should be able to get with all the States and we have begun that process already, to try to get the word out to them that some of the stuff that we are hearing about, especially in terms of these initial permit applications, just isn't necessary and isn't what anybody wanted.

Mr. WYDEN. Again, understand the desire for speed in this area. These companies are doing this now. They are racking up costs. They are telling us about \$100,000 costs. I guess in some cases up to \$200,000 in costs. My friend Mr. Barton brings out these applications. What is being done now to reduce the size and the cost of the applications?

Ms. NICHOLS. Well, let me just mention, I brought with me a couple of other permit applications, not knowing that this was going to happen, but I do have a few with me. Here are a couple of separate ones.

This is an application for a source, it is an oil refinery located in New Mexico, 45 different emissions units at the oil refinery. The source emits nitrogen oxides, carbon monoxide, volatile organic compounds and hazardous air pollutants. That is 1,500 tons per year of emissions plant-wide. Only about 5 percent of the sources

that are in title V are about this size. This is what we would consider to be a hefty permit application. I don't think there is a lot of excess in here. A great deal of it is narrative. A lot of it is tables. It is pulled from the source's existing permit.

This second permit application is from Oregon. This is actually the application that ultimately was needed for the Intel permit. The permit itself, which is a draft permit, is about this size. This was the total application, and it includes a checklist that was developed by the State. There are a lot of pages in here that have very little on them that just indicate a trace amount of a certain pollutant, and then a lot of it is analysis and sampling data for the various emission sources.

This next permit application is a power plant, a whole power plant title V application is contained in here, 3,600 tons per year of emissions. This is what we would expect about 80 percent of the sources would be submitting something closer to that.

Mr. BARTON. Would the gentleman yield?

Mr. WYDEN. Sure.

Mr. BARTON. I am going to assume that those have all been approved?

Ms. NICHOLS. These are all permits which, as far as I know, are—

Mr. BARTON. I mean, they haven't been rejected for incomplete submittal?

Ms. NICHOLS. No, they have not been rejected for being incomplete. They were given to us, they are applications.

Mr. BARTON. The Chair will stipulate that you have given us five applications. We will take the one, we will add them together and divide them by six, and say the average is a box-and-a-half.

Mr. WYDEN. Ms. Nichols, again, without turning this into a box-tossing contest with my friend Mr. Barton, I think the bottom line here is, in 6 months people are going to expect to see the size and the cost of these applications be driven down because it is one thing when corporate scofflaws, and unfortunately there are some, come and ask for some sort of special dispensation, but what we are hearing from with respect to this matter are corporations that clearly support the statutes, they support their philosophy, they support the underpinnings, and then they bump up against one of these horrendous exercises as they try to make their way through the bureaucracy, and they come to the Congress.

Now let me, if I might, ask you about something to the future so that people know that there is more to look forward to as we get this matter resolved at hand with respect to Intel and the size and the cost of the applications.

Describe, if you would, what you think the benefits will be of the more market-based emissions trading efforts that can be facilitated through title V? It seems to me to be something that, as we look to the future, contains great possibilities. It drives, of course, the marketplace in a more efficient way. I mean, we would like to hear what you think is ahead in that area.

Ms. NICHOLS. We have committed to putting out by June 1 a generic rule called an open market trading rule which basically is a template for States—for any State that wants to use it and adopts

it, we will guarantee that we will approve their rule without going through any further process.

What it says is that any business that wants to voluntarily make reductions over and above what is required by existing rules can get credits for those which they can then sell or use for other purposes. It is called an open market, because they can be used for almost anything from delaying compliance to dealing with a situation where you have an upset or breakdown at your facility, to dealing with an ongoing rule where you just don't have the technology or you are unable to get the technology as cost-effectively as you would like, you can buy these credits from another source.

They are based on actual reductions, and one of the things that is exciting to me about the potential of having a functioning permit program—and obviously we are not there yet—is that if we have sources that have an application limit, one of these plant-wide limits, that shows what their tons are, it will become much easier to buy and sell and trade units across corporate lines.

Mr. WYDEN. Thank you. We look forward to hearing more about that.

Let me wrap up by asking about the comment you make with respect to how title V allows companies to avoid costly litigation, specifically there may be some ways that companies receive benefits from the permit shield provisions of the statute and other opportunities to drive down legal costs, something as you know this committee has spent a lot of time on?

Ms. NICHOLS. Yes. If I could give a couple of examples of that.

Mr. WYDEN. Please.

Ms. NICHOLS. Actually, the gentleman who was testifying earlier on the panel that I listened to from The Hamilton Foundry was, in a sense, a case study there because he had been involved in litigation which we understand from the State of Ohio still hasn't been finally resolved in terms of the penalties where they were in disagreement about what the actual permit requirements applicable there were. If there was a single permit, obviously, that would have been less likely to happen.

We have an example of an auto plant in Missouri where there was a dispute between the parties about the degree of emissions control that was required under the Missouri State implementation plan or SIP, and at stake was about 900 tons of volatile organic compounds. This was a case where there was a SIP. The State thought it meant one thing, the source thought it meant another thing. EPA got involved. There was a lot of litigation. If there had been a permit in place that indicated what the actual emissions levels were, it would have avoided years of litigation.

A different example which I know is actually part of the history of the debate that went into this provision of the Clean Air Act was a very messy case involving a paper manufacturing facility in Illinois where a case bounced back and forth between the Federal and State court for years over a definition of whether this particular plant was a paper coater or a paper impregnator. That difference made all the difference in the world in terms of what their emissions limit was.

Mr. BARTON. Would the gentleman just suspend just a minute. I am not going to stop you answering your question, but I have



sent Vice Chairman Cox to go vote and come back very quickly, so I am going to try to keep the hearing going and not suspend it. So at the conclusion of this question, if there is a minority member who wants to volunteer to begin asking questions we can proceed. If you don't want to do that, we will go ahead and suspend for 10 or 15 minutes at the conclusion of Mr. Wyden's questions.

So continue, I just wanted to announce that.

Mr. WYDEN. I think the point is, Ms. Nichols, in both of these areas, as we look to emissions trading driving down the cost of litigation, those are the kinds of discussions we want to have with you because those are exciting future-oriented opportunities, and to get to that kind of more beneficial plane, we have to get answered some of these things our constituents are bringing to us now. We thank you.

Thank you for the extra time, Mr. Chairman.

Mr. BARTON. Ms. Eshoo, do you wish to start your questions now?

Ms. ESHOO. I am going to pass for now, Mr. Chairman. I would like to go and vote because I think that my question is a little longer than the timeframe.

Mr. BARTON. I wouldn't shorten your question.

Ms. ESHOO. I appreciate that.

Mr. BARTON. Mr. Waxman, do you wish to start some questions?

Mr. WAXMAN. I think I will wait as well.

Mr. BARTON. That being the case, we are going to suspend until 1:41 p.m.

Mr. WAXMAN. Mr. Chairman, if Mr. Cox comes here in the meantime, why don't we let him do his questions.

Mr. BARTON. That is a good idea.

We are in recess until myself or Mr. Cox, whichever comes back first, arrives.

[Brief recess.]

Mr. BARTON. I guess I can ask one question while we are waiting for other members to return. This is a little off point. I was going to ask this at the conclusion of the other questions, but while we are waiting for other panel members, Ms. Nichols, this goes to a letter that myself and Mr. Bliley and Mr. Bilirakis sent you back on April 3, and you referenced this in your opening statement about enhanced monitoring. We had sent you a letter on April 3 expressing our concerns about the pending EPA proposal for enhanced monitoring. The letter requested a 12-month extension of the pending April 30 deadline.

Subsequent to that, EPA withdrew the proposal and has been working with industry groups to modify it, but you haven't officially withdrawn it by notification in the Federal Register.

Do you intend to formally withdraw the rule and, if so, when?

Ms. NICHOLS. Excuse me, Mr. Chairman. We are planning, first of all, in meeting with the stakeholders, which is happening, I believe, May 28, to discuss the alternative concept that EPA is working on that would replace the former enhanced monitoring rule as well as the process. We were only able to obtain a 2-month extension of time in order to complete that initial rethinking process.

But at the point that we have done that—

Mr. BARTON. That is from the court, a 2-month extension?



Ms. NICHOLS. From the court.

Mr. BARTON. And when did that start ticking?

Ms. NICHOLS. Right before that April 30 deadline. So we have to go back to court with a process laid out for how we will go about completing the enhanced monitoring rule. When we do that, when we have the process, then we will lay that out in a Federal Register notice and explain exactly what our intentions are.

Mr. BARTON. So you did get an extension from the court on or about April 30 for 2 more months, which would be May and June. So by the end of June, you will either withdraw the rule formally and notice that in the Federal Register, or you will put forward the reformed rule; is that correct?

Ms. NICHOLS. Not exactly, Mr. Chairman. What we have said is that we believe it will take us at least another several months beyond that point to get to the stage of having a formal proposal for the Federal Register. We want to engage in an extensive stakeholder outreach program before we go forward with another formal proposal.

Mr. BARTON. So you don't expect a new proposal until later summer?

Ms. NICHOLS. I think that is probably right. What we do expect, though, is to be able to clarify for all interested parties exactly what the procedural track is that we are on as well as the direction that we are headed in so that everybody will have notice then.

Mr. BARTON. I want to be sure I understand. You have gotten an extension from the court. Will you also have to submit, and if so, when so, a request to the court for additional time to promulgate your enhanced monitoring rule?

Ms. NICHOLS. We will have to submit a request for additional time to the court and we indicated that when we filed for the first extension. We put that in the court papers.

Mr. BARTON. And when you do that, you are going to request, if I understood you correctly earlier, 2 months additional time?

Ms. NICHOLS. No. The 2 months is what we received the last time we went to court.

Mr. BARTON. So how much time will you—

Ms. NICHOLS. We believe we need a full year to complete the rulemaking process for the enhanced monitoring.

Mr. BARTON. A full year?

Ms. NICHOLS. Yes, by the time we do all the administrative procedures.

Mr. BARTON. Okay.

We have been told that EPA may be going forward with one of the most controversial portions of the enhanced monitoring package that deal with credible evidence, or the provisions that address credible evidence.

Is this true?

Ms. NICHOLS. Mr. Chairman, the credible evidence or the ability to use any credible evidence in an enforcement case is a separate issue from the requirements of the enhanced monitoring rule that are to be included in title V. It is an issue that is of great concern to our Enforcement Division. It is one that they have indicated they feel a great concern about in the past in some instances not being able to use valid evidence in an enforcement case to dem-

onstrate the amount or the duration of a violation, and it is something that they are looking at at this point.

But it is not part of the enhanced monitoring rule as I interpret it, and we are not working on that at this point.

Mr. BARTON. Sometimes you answer so excruciatingly correctly that I don't understand what you are saying. So I have to—

Ms. NICHOLS. I am under penalty of perjury here.

Mr. BARTON. I am not even implying that, so I don't even want to joke about that.

Did what you just said tell me that you do intend a further rule-making on credible evidence, yes or no?

Ms. NICHOLS. I have no such intent, sir.

Mr. BARTON. You have no such intent. Does anybody in the EPA have such intent?

Ms. NICHOLS. I can't answer that question is what I guess I should say because I don't honestly know what the Agency will decide to do with that proposal.

Mr. BARTON. Now you are one of the highest officials in the Agency, can you give me a clue as to what your intention would be if asked by others in the Agency should there be another rule-making on credible evidence?

Ms. NICHOLS. Well, I have already stated publicly that I think that the issue is a separate one and should proceed in a separate fashion and not clutter up the enhanced monitoring rulemaking. I believe that we need to move forward quickly with a new proposal on enhanced monitoring so that people who are subject to this title V program will know what the monitoring provisions are going to be, and that we should focus our attention on that and try to get some consensus from industry before we would do anything relating to this credible evidence provision.

Mr. BARTON. And we do now have a questioner back, somewhat tardily, but she has returned.

The provisions addressing credible evidence, if I understood you correctly, there are people in your Agency that feel that credible evidence should be allowed in some circumstances, but they apparently don't feel so strongly about it that they are going to demand it, and you don't think there should be a further rulemaking on it, if you had to make the decision, but you do think that there should be a separate review of the situations in which credible evidence would be allowed; is that correct?

Ms. NICHOLS. Yes. I believe that the correct way to deal with it is to look at—there was a record that was built when they put this proposal out the first time. I haven't even seen the testimony that came in on that particular issue, or the comments that came in on that particular issue. I think it deserves another look before a decision is made where or how to pursue that, but I don't want to pursue it as part of the enhanced monitoring.

Mr. BARTON. I thank the gentlelady, and would now recognize the gentlelady from California for such time as she may consume. The clock is going to be set on 10 minutes, but you are not bound by that.

Ms. ESHOO. Thank you, Mr. Chairman, and if I caused any disruption here at the committee, I apologize for that.

Welcome, Administrator, and it is good to hear you. First of all, to see you here, and then to hear you speak to what you believe needs to be done, and then giving us hope that it will be.

The success of the Oregon P-4 program is being touted, and it should be because it is a success. I think that there is consensus here that it should, in fact, be the national model. It is working in one place, and people seem to be happy with it. So that blueprint should be duplicated.

But you also say that you are going to come out with your new proposal next month, and I can't help but draw a connection to what Karen Olson said earlier, if I heard it right, and that is, that as the Texas Permitting Director, she hasn't even heard of P-4.

Now if you are talking to stakeholders, if this is, indeed, something that has moved to the front-burner, you are about to come out with your specific language, why don't the stakeholders even know about it? I mean is there something that is not being put out in the network? Should that give us cause for concern? I can't help but notice it, and I picked it up today, this isn't something that I thought of asking you before we came into the hearing today.

You weren't here for my opening statement, which was fine, but I talked about how important it is for the rhetoric to really catch up with reality. People have been waiting and waiting, and I think that this is in many ways the last shot for the credibility on this issue with those that are impacted by it and the EPA. I can't help but say that to you, and you know that we have communicated, we have written, we have talked, we have cajoled, we have met, we have done all of that.

Anyway, why don't you address the first part of my question, and then address the specific language in the upcoming rule. I mean, it is out on the Internet. It is not actually published, as I understand it, in the Federal Register, but it seems to me from what we have picked up at my office that it doesn't bear the specificity that it needs in order to accomplish the broad range of things that you are touching on here which, again, gives me some pause about rhetoric and reality.

So those two points, please.

Ms. NICHOLS. Yes. Thank you, Ms. Eshoo.

There are a couple of things. First of all, the Oregon experience is one that we now within EPA have a grant to go out and market to other States as part of an Environmental Technology Initiative. Assuming that the funds aren't taken away from that program, for the first time we will have some resources to go out and talk to States about that program and to encourage people to try—

Ms. ESHOO. Can I just interrupt you for a moment, I know that there is a stretch on resources everywhere, Federal, State and local. Do you have to put on a marketing program to let people know? If we can issue the mounds of paper that it takes, by necessity, and I am not going to diminish that, this is serious business, it is public health. The woman that was here on the first panel, I think, spoke quite eloquently to what happens to people when things go wrong. So I am not here to diminish it.

But if you don't get funding from Congress, then people in Texas and other places are not going to know what you are working on?



Ms. NICHOLS. Let me pursue that a little bit. Obviously, there are tools that we can use and we do use, such as the Internet and bulletin boards in which we publish information that many, many people can access. In fact, we are doing a training course in a couple of weeks which is going to be done by satellite downlink. There are EPA-established training centers across the country where people can go and participate in a training program about how to implement a title V program. We are going to be putting out a lot of this information that we hope will simplify and clear things up.

But, as I think you heard earlier, there are great differences among the States in their permit programs, the 50 States jealously guard their individual permit program, and they don't want to see them overridden or tossed aside.

Ms. ESHOO. Let me ask you this, let me back into it a different way, is there any State that has expressed to you that they do not want language in this supplemental proposal that they don't want flexibility built into it? Is there any State that has notified you as the Assistant Administrator?

Ms. NICHOLS. No. Every State says that they want flexibility, but their notion about what flexibility is and how to interpret it in the context of their own permit requirements can be very different. For example, in the use of the terms of public participation, public notice, timeliness of applications, and what should be in an application. Some States have more in their new source review programs like Texas does, and don't want that stuff to go into the title V permits. Other places want everything in the title V permit, and EPA has been trying to balance all the varying State interests and write one rule that everybody can live with but, at the same time, allows for a maximum amount of flexibility. It is a real art, it is a real tension. We haven't done it, obviously, at this point successfully and we are still listening to the comments, such as the ones that you heard here this morning from Texas, and trying to find ways that we can put what Texas wants into this rule without, in effect, messing up what Ohio wants to do under the rule.

We think we are getting very good at this. We are making progress, but it is not yet perfection. So we need to get the word out to States that we are, in the meantime, willing to work with their programs, to use their program as the basis, and to do much more of the encouraging.

Ms. ESHOO. And you are going to have this done by June?

Ms. NICHOLS. We are going to have the proposal done by June.

Ms. ESHOO. But you are saying that you need to talk to people to find out what they really want in order to come out with a supplemental that is going to please them.

Ms. NICHOLS. But we are doing this on an ongoing basis, that is what the stakeholder process has been doing since last August. It is why there is frustration on the part of industry, because some of them feel like they have told us the same thing several times and we keep improving it a little, but we are not giving them quite as much as they want. There are some issues, like whether EPA should retain any veto at all, some industries are just adamantly opposed to it. We have tried to find ways to limit it and to reduce it, and so forth, but we still haven't 100 percent eliminated it. So we will still have meetings where people will raise that issue.



Ms. ESHOO. What has been the biggest problem with the States with you, in terms of this supplemental language?

Ms. NICHOLS. The biggest issue, I think, with the States has had to do with what goes into the title V permit, what has to be a part of the permit. It took a long time, frankly, by my judgment, for EPA to come to terms with the notion that they could accept a State's minor new source review program as adequate if it had a sufficient public process in it so that when they received a permit from the State that made a change, or received a change from the State, they could, in effect, just staple it to the existing permit without having to go through additional process.

I will tell you, this is my impression, having, as you know, run a State agency, I think there is a lot of difference between having been in a State where you actually issue permits, and being at EPA where you look at language but don't necessarily write permits. So it took some time for people to figure all of that out.

But I think we have come to the point now where we will have a proposal which will be very close to what most States think they want. We will still have to make some accommodations during the comment process.

Ms. ESHOO. I still can't make the connection, I have to tell you, and you give such professional testimony that I feel a little almost inept in this, but I know that I am not because I have good sensibilities, what is it that is missing between what business and industry—I mean responsible people, there are some that will come forward and tell you one thing when they are really doing something else and want something else, but for the most part that is not the case—what business and industry had said, what you are saying, and the States. Where is this thing breaking down?

It seems to me that the agencies are driving with an emergency brake on. There is something wrong, there is something getting stuck somewhere. Now it has come to me in different ways that it is stuck in the counsel's office, someone doesn't like something there. The time for really the professional talk and the excuses on the part of some, I think, are running out. I will tell you, because there are those in the Congress that will take on this whole law. I am telling you, they will take on the whole law, and if you don't think we have the responsibility to fix this thing, to repair it administratively, anyone that has regard for this law, fasten your seatbelts, because there are going to be a lot of other things done to it.

So I have to say to you that that is my warning. You know that I am saying it out of a deep-rooted frustration and on the part of someone that has cared enormously about these laws. So I know as the Assistant Administrator you have tried, but you know, at the end of the day, when I go back to my constituents, if I just say to them, I tried, I would come up short. I have to tell you. People deserve results.

The one side says, promises made, promises kept. There have been promises made by the administration, and I think these promises need to be kept. They are very serious ones, and they affect everyone.

Ms. NICHOLS. We have set some deadlines for ourselves, Ms. Eshoo, and I agree with you that we need to be judged by those deadlines.

Ms. ESHOO. But I hope that the language that you come out with in the supplemental proposal, not only the deadline, but the language that is in the supplemental proposal is what works. You see, that is where the rubber is going to meet the road.

Ms. NICHOLS. We need the language out there in a Federal Register Notice so people can see it and can respond to it.

I would just want to add two thoughts here. The first is that we are in the start-up phase of a program where different States are at different points in the process. The chairman asked me that question earlier. People in some cases are filing applications under programs that haven't been approved yet. Other States still haven't submitted their programs. Most of them are now in, and are in the works of being approved. So it is natural that we need to do a better job of telling people where we are at. That is our responsibility.

I do believe also that there have been some out there in the world of the lawyers and the consultants who have profiteered on this situation to some extent, that is, who have taken advantage of the fact that there is confusion to convince people that they need to spend a lot more money on getting those applications in than we think is necessary.

Ms. ESHOO. That is the way people get to talk to the EPA, they sue so that they can be at the table. It is the most ridiculous way of dealing with human beings. It is just wrong.

Ms. NICHOLS. And we are changing over to a new system. When it is done, when we finally get there, it will—

Mr. BARTON. That great day, we Congressmen can hardly wait.

Ms. ESHOO. Thank you, Mr. Chairman. I see that the red light is on, and I thank you for your patience, and I thank the Assistant Administrator. I look forward to this specific language containing what you say it is going to contain, and then we will go from there.

What is the date of this?

Ms. NICHOLS. The proposal is due in June. I don't want to hedge on the date, but I have to say we are subject to review by the OMB, but they know that the world is eagerly awaiting this proposal, so they will work with us, I am sure.

Ms. ESHOO. Thank you.

Mr. BARTON. I thank the gentlelady.

We recognize the gentleman from California. The clock is set for 10 minutes, and that is not a hard and fast rule, but we will give you at least 10 minutes.

Mr. COX. I thank the chairman.

I welcome you again. I understand that you have had recently a meeting with California air agencies, and with businesses of varying size, employers, to discuss title V implementation in California. The EPA has several action items from that meeting, and I wonder if you could give a report to this subcommittee on EPA's response to those action items?

Ms. NICHOLS. I did bring my list with me of the issues that we discussed, some of them are the same issues that we are talking about here, but there were some variations. Actually, within the last 2 months, I have met on three different occasions with Califor-

nia representatives. The most recent one was just this past week with a group that included the San Joaquin Valley interests, a supervisor from San Joaquin came in along with a group of—

Mr. COX. In fact, it is that Tuesday meeting, which was 2 days ago, and that agenda and that to-do list that I am talking about. I just wondered if you could tell me with respect to that meeting what EPA's response is?

Ms. NICHOLS. Well, I am afraid there was a whole list of items that we discussed at that meeting.

Mr. COX. Right.

Ms. NICHOLS. I didn't bring it with me, so I don't want to leave anything out or fail to answer something.

Mr. COX. Let me ask you the question so that you don't need to worry that you are leaving things out because you can't remember them.

Do you remember anything that you are now following up on from that meeting?

Ms. NICHOLS. Well, we agreed with San Joaquin that we were working with them. This is being done through our regional office, Region IX, on language that would go before the San Joaquin Valley Unified Air Pollution Control District when they vote on their proposed title V rule, which is coming up, I believe, within a week or so. They wanted a resolution that laid out a statement of principles that EPA would agree to, as would the State and the San Joaquin Valley in terms of how we interpret various title V provisions. We agreed to those in principle at the meeting and said we would follow-up with the language which they were going to draft, and would get that to the board prior to the meeting. That was the principal item that was a to-do after that meeting.

Mr. COX. Much of the testimony that we have received thus far has focused on the paperwork burden, the regulatory burden, the bottleneck, the delay and the expense of the title V permitting process. Because you are getting so many applications from around the country, I take it the number is in excess of 30,000, is that right?

Ms. NICHOLS. That is the numbers that are subject to the title V program, about 34,000.

Mr. COX. So all these different places of work have to get their paperwork approved through a single Agency headquartered in Washington, D.C., the EPA?

Ms. NICHOLS. No, that is not correct. They have to get their permit from their State agency under a program which includes a possibility that within a 45-day time period it could be—

Mr. COX. I am sorry. We obviously agree on the way the program works, but everybody has to file their applications with EPA?

Ms. NICHOLS. No, they file them with the State. The State operating program is approved, they file their application with the State. We would only look at it if we came in and audited, or if someone petitioned us.

Mr. COX. So none of these documents is filed with you, all the things that you just showed us were not filed with EPA?

Ms. NICHOLS. That's absolutely correct. We obtained them from States. States ask us to look at them sometimes, or they come to us through industry, and other ways.



Mr. COX. I take it that the benefits of doing it that way are that you avoid a bottleneck in Washington?

Ms. NICHOLS. Well, what we are trying to do is work with State programs. As you know, Mr. Cox, the philosophy is that States implement all of the provisions of the Clean Air Act except things like national rulemakings for automobiles, and we try to work through and with the States.

Mr. COX. Now we heard from Intel that they were able to work with EPA around the problems in the title V program so that within the context of Intel's facilities, they would be able to have some flexibility, have a cap applied to the whole operation, they could make changes within it without having to get separate approvals for all of those.

Would it not make even more sense for the EPA to take that approach with States so that you would approve the State's program, and then you wouldn't monkey with what went on inside that State so long as you thought that what the State was doing made sense?

Ms. NICHOLS. That is our hope and our intent. To use the Oregon case as an example, the regional office's role in that instance was to sort of provide the assurance that EPA wasn't going to come in and second guess what the State was doing, but it was the State's role to develop the program and develop the permit. They asked for our involvement because States are, needless to say, especially with a new program, they want to make sure what they are doing is following the Federal law.

Mr. COX. Now if a State has a program that meets the minimum requirements in title V, should EPA cause that State to change their program?

Ms. NICHOLS. As far as I know, we would not ask a State to make any changes if the program was in compliance with title V.

Mr. COX. All right. So if a State has an existing program that meets the minimum standards that Congress included in title V, EPA will not issue prescriptive regulations that require States to revamp their existing permitting programs?

Ms. NICHOLS. That is correct.

Mr. COX. I think that is something that we can work with. It strikes me that if EPA is willing to get out of the business of reviewing title V permits altogether, and to simply sign off on State processes, then a great deal of the administrative burden can be relieved.

The administration recently published a program for reinventing environmental regulation, and part of that is what I first thought was Project 40, but I now understand it is Project XL.

Ms. NICHOLS. For extra large.

Mr. COX. Right. In California might it be possible that an existing permitting program could fit within Project XL, as you suggested in your meeting on Tuesday, and how would that work?

Ms. NICHOLS. Project XL is a program which is designed to pick out some States and some individual industries to develop model programs that, in essence, will receive greater flexibility under rules in return for going beyond the prescriptive requirements of the existing regulations. So it is the cleaner, cheaper concept being worked out either with a whole State or with an individual industry.



We talked about that as a possible way in which the State of California or possibly one of the districts, actually at an earlier meeting this was raised as an idea by the Bay Area District which, as you know, is now an attainment area, but still it will have a permit program as part of their maintenance program as something that they might want to engage in.

Mr. COX. I wonder if, on the issue of requiring or not States to revamp their existing permitting programs, you can respond to Ohio's complaint. Earlier this year, the State of Ohio wrote: One of the most frustrating aspects of the proposal—I am now quoting from testimony that we got earlier from Mr. Carpenter, and he, in turn, is quoting what the State of Ohio had to say—one of the most frustrating aspects of the proposal is the tremendous increase—and these are the proposed title V regs—in regulatory burden being placed on the State and local regulatory agencies, and the regulated community without any apparent concern by USEPA.

Obviously from the viewpoint of the State of Ohio, there is a requirement from EPA as a result of its prescriptive regulations that they revamp their programs at significant expense. How do you respond to that?

Ms. NICHOLS. The State of Ohio in that quotation was commenting on the August proposal, which is the one that we have said we disavow and want to replace. Actually, Ohio's Commissioner has been the lead among the States in developing a State proposal for implementing title V programs.

We have been working through a new organization called the Environmental Council of the States which represents all 50 State environmental directors or commissioners, the political appointees of their Governors on a number of issues about title V implementation. On this one, Ohio's Commissioner took the lead role in putting together the State proposal. They have been working with us on our new proposal, and have indicated that they are—I don't want to say that they have signed off on every word of it, but they have generally supported the thrust of where that proposal now is.

Mr. COX. Well, just to wrap up, I appreciate you answering questions with respect to your recent California meeting, and I especially appreciate what I understand to be your philosophy, which is that States ought to be able to take a look at title V, comply with the law themselves, and EPA shouldn't issue regulations telling them how to do it.

Ms. NICHOLS. That is my philosophy. I find it sometimes frustrating, in dealing with 50 States. We have States like California that clearly know what they want to do, know how to do it, and just want EPA to stay out of their way and give them as little direction as possible as long as they are in compliance with the Federal law. We also have States that are at the opposite end of the spectrum that really don't want to do anything until they see EPA regulations in black-and-white, that they can then take to their boards and say, this is how it should be done.

I am just trying hard to balance those interests, to give the States like California what they need to move forward, while at the same time giving those other States that need more help the help that they apparently need.

Mr. COX. I thank you.

I yield back.

Mr. BARTON. I thank the gentleman.

I would now recognize the gentleman from California for a minimum of 10 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

Ms. Nichols, we heard a lot of testimony this morning about the costs associated with the operating permits program. Your testimony discussed some of the benefits, and I would appreciate it if you would elaborate on those benefits.

Ms. NICHOLS. Well, the benefits are really two-fold. Well, they are more than that, but let me just mention a few of them. I think the major benefits come in the area of improved understanding by sources, by the governmental agencies, and by the public of what the requirements on an individual source are.

As part of our reinvention approach, EPA has been working throughout the country on a permit improvement process, and every time we go out into communities what we hear is, people want one permit for one facility that contains all the requirements so that they can look at it and know what they are subject to. Unfortunately, after 25 years of environmental regulation in a State as complex as California, an individual plant might be subject to years of requirements that have been added on through rules or permit amendments from the local district, plus some State requirements, plus Federal requirements. There is no one place that that source or anyone else can go and look up what the requirements are.

This has led to confusion on the part of sources, it has led to enforcement actions being taken sometimes, disagreements between levels of government about what the requirements were. That was the problem that I think title V was designed to address.

The other major benefits of the title V program are that sources, because they will prepare an application and go through this, hopefully with the help of the State, will find whether there are requirements out there that they haven't been complying with, that they will come into compliance with them. Because they will be certifying through a corporate officer that they are in compliance with those requirements on an annual basis, there will be an incentive to look to do the kind of auditing of their own behavior which we believe will improve the level of rule effectiveness.

Currently in our State implementation plan, we assume that any rule is going to get about 80 percent of the emissions reductions that it is actually expected to get, on average. If we adopt a rule that says reduce 100 tons, what we really are likely to get is about 80 tons, because of variability, because of confusion, whatever.

As a result of even a modest improvement in that from people paying more attention, we could get additional improvements in air quality that could translate into not having to adopt new regulations to come into compliance with our air quality standards. So we do believe that there will be real air benefits as a result of this program.

Mr. WAXMAN. You talked about this notion of the operating permit program improving compliance. Can you give us some examples of that?

Ms. NICHOLS. I don't have a specific company that I would cite at the moment. We have heard anecdotes from States about companies that have looked at their own backlog of various permits for their various pieces of equipment in the facility, and have discovered that there were rules that they weren't in compliance with and have gone back and made those corrections.

We have also heard from some sources that they are concerned that they may find those things, and are worried about the possibility of their being some retroactive liability. We have had a lot of questions, and some from very major sources about whether they might be subject to enforcement for things that they did in good faith in the past that turned out not to have been correct under the law. We have, in fact, issued some general guidance on that topic.

Mr. WAXMAN. It seems to me that one of the benefits of the permit program is increased flexibility for industry. Without a permit program, emission controls must be incorporated into the SIP, and this is a very inflexible system because changes require State and Federal rulemakings.

Would you see this as a benefit as well?

Ms. NICHOLS. Yes, I certainly hope so. Earlier I was asked a question by Mr. Wyden about trading programs. He was asking about the open market trading rule that we are working on. You are familiar, of course, with the RECLAIM program on the South Coast. In all of those types of programs, you need a permit that actually indicates what the allowable emissions from the source are in order to be able to use these more flexible compliance approaches.

Mr. WAXMAN. Mr. Chairman, I note you have exhibited seven boxes of a permit application. I wonder if you could tell us which company submitted this, and for which facility, and I would like to make a request that the seven boxes be part of the hearing record so that our staffs can review the boxes.

Mr. BARTON. Well, I am certainly willing to do that if necessary. That is a public document that was presented to the State of Virginia. The company that actually submitted it has asked that we not release their name, but we are required to, if requested. You certainly are welcome to review the documents. I have thought about doing it myself.

Mr. WAXMAN. I think we would like the opportunity to have our staffs review the documents. I don't want you to have to reveal a name.

Mr. BARTON. Well, there is no problem, without any objection at all, to review, in fact, I wouldn't mind having an executive summary of one box or less of the entire thing, if your staff wishes to do so.

Mr. WAXMAN. Well, I obviously share with you the notion that it shouldn't take seven boxes of papers to have an application for a permit, and I wouldn't support that result, and we would like to be able to find out what happened to this situation.

Mr. BARTON. I agree with you.

Mr. WAXMAN. And any other situation, so that we can work together.

Mr. BARTON. Any staff person of any member of committee that wishes to review those boxes, or any other boxes that have been



submitted as exhibits, we would be more than happy to make that happen.

Mr. WAXMAN. I thank you very much. I appreciate that.

I have no further questions, and I yield back the balance of my time.

Mr. BARTON. I appreciate the gentleman yielding back the balance of time.

Before we conclude the hearing, I just have two questions. Again, these are more in the nature of trying to educate me on title V.

The gentleman from Intel that testified this morning indicated that they went to great lengths in negotiations with the State of Oregon and the appropriate EPA officials in Region X to develop this P-4 program, and I have actually been trying to read through title V of the act for the last hour.

In 502(b)(10), it says the following, "Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions: Provided, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different time-frame for emergencies.

So if I am reading this correctly, any company in the country that has a permit, so long as any operating changes within that particular facility as defined under the act would not have to re-submit a permit if their total emissions don't go up; am I reading that correct?

Ms. NICHOLS. Well, I believe you have read the language correctly. The issue that has been a hang-up in some States is that some States, in their own permit modification process, add additional requirements to a source while they are getting their new source review permit for the change or the modification, and in that process they add on things like a limit on the amount of a certain pollutant that can be put out, or they require a particular piece of equipment. The issue how does that get into the Federal permit.

Mr. BARTON. The Federal law, if I understand it correctly, says so long as the rate of emissions doesn't change or if the total emissions from that facility doesn't change. Now does State law preempt that?

Ms. NICHOLS. No. I think that it is an issue of reading different sections of this program together. Mr. Chairman, I don't want to pretend to be an expert on the law either.

Mr. BARTON. I would like for somebody who is an expert at the EPA, which there are bound to be more than one, to research that and just get back to me in writing.

Ms. NICHOLS. We would be happy to do that.

Mr. BARTON. That would be helpful.

The Chair notices that the distinguished ranking member has arrived, and the Chair would recognize him for such time as he may



consume to ask questions. The clock is set on 10 minutes, but that is not a limit if the distinguished gentleman has further questions.

Mr. DINGELL. Thank you, Mr. Chairman.

Ms. Nichols, welcome to the committee.

Ms. NICHOLS. Thank you.

Mr. DINGELL. Ms. Nichols, this is the third time that you have appeared before this committee this year, and interestingly enough, every time, you have had to indicate to the committee that the Agency is showing new-found flexibility. I commend you for that.

This is the third matter on which the committee has been concerned about the fact that EPA has been admittedly overzealous, and this is the third matter for which EPA has imposed heavy and, in the view of many, unnecessary burdens on the citizens and on the institutions and individuals and businesses regulated.

I wonder, do you notice a pattern here?

Ms. NICHOLS. Mr. Dingell, I think there is a pattern in this sense, that ever since this administration has been in office, and certainly ever since I have been here, which is almost 2 years, we have been trying in this Clean Air Act, which is, as you well know, a very complicated statute that covers every sector of our economy and every State in the country, to take a look at what was going on and to see how to make it work better because, clearly, we have heard back from States and from the regulated community, and also from the environmental community that the statute wasn't working the way they thought it was going to when it was passed.

We have taken it as our responsibility to try to make it work. That has been the objective. We have had the help of, obviously, the career employees of EPA, but to announce a new philosophy and then to implement it does not happen immediately. In any kind of restructuring or reinventing activity, there is some time lag between the intent and the actual results being seen out there in the field, but we are working very hard to try to make that happen.

Mr. DINGELL. As you remember, I was not a great enthusiast of the amendments to the Clean Air Act which were adopted, and I spent a great deal of time in this committee trying to work out a proposal which made good sense, which cleaned up the air, but which, at the same time, did not impose frivolous and unnecessary burdens on industry and citizens of this country.

You will recall that it was not infrequently that we had the administration witnesses before this committee in the prior administration to discuss the same problems which we are discussing with you today. This is not a fresh thing. It is not new people who are doing something different and worse. It is just that the political level officers who are called before this committee are constantly having to address the question of the work which is being done by the Agency.

I have the regrettable view that oftentimes it is an Agency where the work is being done badly at the working level, the regional levels, and at other working levels inside the Agency.

I am concerned. This committee has inquired into things like cooking figures, sloppy science, poor factual support for rule-making, inability or reluctance to control contractors, permitting contractors to deliver bad information, allowing contractors to essentially deal with policy questions as opposed to allowing them to

simply provide support for the Agency, allowing them to actually perform functions which I viewed as being governmental and regulatory in character, and failure to properly supervise contractors on questions like expenditures of public moneys, on research and production of facts and data and information for the Agency for the committee, and those things seem to be enormously difficult for the leadership of the Agency to deal with.

Now I happen to know that Ms. Browner is trying. I have a great deal of faith in her. I think you are trying. But it seems to me that somehow or other, we have to get some supervision of the people inside the Agency.

I had a question which I tried to raise at the Agency at one point about allowing a company to clean up a superfund site meeting full standards. The Agency insisted on listing it. I said, why do you have to list it if they sign a contract? They were never able to explain it, but they went ahead and they listed it. So now they have a great public mess on their hands instead of having a triumph having said that the Agency will clean up to the standards that make sense.

You have observed now that your Agency is under constant attack. You are under attack from industry. You are under attack from Members of Congress. You are under attack from the Senate. You are under attack in the press. The Agency is viewed as being highhanded, arrogant, lacking in competence, lacking in decency, and you leave, wherever the Agency acts, you have a trail of outrage behind you.

Now I am trying to be a friend of the Agency, and even though I disagree with a lot of things that the Agency does, I try to see to it that the Agency has the support to carry out the law. But the curse of the business is that the Agency has now spent so much of its time and energy making enemies that the end result is that your best efforts, and I believe you are trying, are not having the impact that you and Ms. Browner want, and rather than getting credit for trying to straighten something out, the only thing people want to talk to you about when they see you is what an abominable job your people are doing in terms of imposing bureaucratic problems on it.

As a result of this, this committee is inundated with demands for change in the law. Your legislation like the Clean Air Act is subject to change in conference committees which involve appropriations matters.

Ms. Eshoo, who is a very gentle person, expresses great outrage at the way the Agency is conducting its business.

I am not sure I have anything to ask, except to say to you that we are not going to be able to protect the Agency. We are not going to be able to protect the people there. We are not going to be able to protect the basic laws under your jurisdiction. We are not going to be able to continue the progress that we have made over the years unless that Agency, and I am talking about from the very top right down to the bottom, begins to recognize the problems that you have, public relations problems, problems with other elements in government, other agencies.

I am not just talking about under the previous administration, under this administration, other agencies detest EPA because they

regard you as highhanded, lacking in factual information, intruding into the missions of other agencies in ways that go far beyond where you should. You find very few friends for the Agency, and worse than that, as you go about your business, you find that the friends of the Agency are not only muted, but that they are in the awkward position of simply not being able to fight all the battles that they have to fight to keep the Agency and its programs and its legislation intact.

I just hope you take this message back down there. These hearings are going to continue. The attack on the Agency is going to continue. The attacks on the basic statute are going to continue. The difficulties that you are going to have in terms of budget and in terms of dealing with the proper administration of your statute, protecting your basic statutes, all those difficulties are going to continue.

I am not saying this with anger toward you or with anything other than respect. All I am telling you is that this a problem that the Agency has to address, and if you don't, the consequences in terms of the environment, in terms of the Agency, in terms of the Congress, in terms of the public, in terms of the government overall are going to be very serious, and I just hope you understand that.

Ms. NICHOLS. I have heard the message, Mr. Dingell, and I appreciate the spirit in which it is tendered. I think, on behalf of the Administrator, as well as the men and women who work at EPA, there certainly is a very strong sense of the necessity to justify the public's trust and to carry out the mission in a way that does make common sense.

Mr. DINGELL. I apologize, I know you get the message. I got a message just now that I have to vote somewhere else, and I have to go. We don't have proxies anymore.

I appreciate your attitude, and I appreciate what you have said. I thank you.

Ms. NICHOLS. Thank you.

Mr. Chairman, I would like to correct the record on something that I said in response to a question by Mr. Cox, and I would like to apologize because he is not here, but I don't want to leave it hanging, if I may.

Mr. BARTON. You and I will have a little dialogue.

Ms. NICHOLS. Mr. Cox asked me a question about applications being submitted to EPA, and I gave an answer that I thought was a sensible answer, and I think it was correct, but it did not address the entire issue.

The question was about applicants having to submit their applications to EPA and get them approved, and I stated that they didn't have to do that, and that was true.

However, I was not correct about the total process, because it is true that under the statute, which we are trying to implement here, States do have to submit the applications to EPA. As I understand it, having now been referred again to the statute which I am supposed to be an expert on—

Mr. BARTON. I have it right here in front of me, and I was actually going to correct the record myself, if you didn't.



Ms. NICHOLS. Yes, States are actually required to submit those applications. I don't think that that is something that, if we were writing it today, we would have written that way. I would like to find a way to burden less of a transfer of paper.

Mr. BARTON. That was one of my questions earlier, I had asked the State regulators who were here, and I may have even asked you, if it might not be one of the changes that we require, obviously, the EPA to approve the permitting plans in each State, but once that is done, unless there were some—through just some normal audit, or some reason because of a petition by an affected party, through the courts, or something like that—that the States would not have to submit a particular permit to the EPA. That is one of the proposals that might be acted upon.

Ms. NICHOLS. I would like to go back and get the advice of our General Counsel on this, but one question I would have, just off the top of my head, is whether we couldn't deem that something had been submitted just because it was in the State's records without actually having to have them ship boxloads of applications to EPA, because we don't want to do that.

Mr. BARTON. Of course, you don't get boxloads, you just get the little thin ones.

Ms. NICHOLS. If you aggregate all the, what would it be, 3,000 from Texas, that might be a few boxloads.

Mr. BARTON. Well, the record will be corrected, and I will personally notify Mr. Cox at the next vote that you have corrected it voluntarily.

I have just a few kind of cats and dogs questions before we allow you to cease your testimony. The maximum permit by statute is 5 years. What would the EPA's official position be to perhaps extend that so that you could give a permit for longer than a 5-year period?

Ms. NICHOLS. I think that the date of 5 years was probably chosen to fit with the cycle that many States that have operating permit programs use for updating their permits. I don't think that there is any correct answer there in terms of a number from an air quality point of view.

Mr. BARTON. That is not a magic number, and that again would be something, if we wanted to change, it would have to be done statutorily, but it might be that we could go to a 7-year period or even a 10-year period under certain conditions. So that, again, would relieve a little bit of the paperwork.

Ms. NICHOLS. Yes, and also, in addition to that, just to let you know what we are thinking about administratively, we are also looking at ways to make the renewal process be a less onerous process than getting a new permit, and make it much easier.

Mr. BARTON. There is also in title V a number of sanctions that are allowed to the Administrator to administer, if necessary, to States that don't comply by submitting their plans within a time certain. These sanctions could certainly apply to the sources that need to be permitted, if they refuse to comply.

But there is no sanction on the EPA if they fail to act on any of these plans in a timely fashion. No one likes to be sanctioned, I understand that. My children don't like to be disciplined when they do something inappropriate, and I don't like to be disciplined



when I do something inappropriate, which doesn't happen but rarely. But if we were to make some changes in the act, would it perhaps improve efficiency if we put some sanctions in for delay of the statutory requirements at the EPA?

Ms. NICHOLS. Well, I think what you have done, which is perhaps a greater sanction, is you have provided for citizens suits to compel the EPA, if we miss a deadline, to be put under a court ordered deadline and be supervised by the courts. That is the way Congress has done it in the past.

Mr. BARTON. But we allow the EPA a \$10,000 a day minimum civil penalty and withholding of State highway funds. There are a number of very specific sanctions that give tremendous leverage. The EPA didn't put that in the law, we put it in the law. The U.S. Congress put it in the law to make sure that people complied and States complied.

But we don't have any sanctions if, for some reason, the Agency doesn't comply. It might be that if we did that there could be benefits, \$10,000 a day begins to add up if it is coming out of your budget, or \$5,000 a day, or withholding of travel funds. I mean, there are any number of legitimate sanctions that could be put on the books.

I don't expect you to answer that in the affirmative, but—

Ms. NICHOLS. Actually, I was going to make a philosophical statement also as a parent, as well as a person who doesn't like to be disciplined, that I have always found that a combination of having sanctions and carrots was the most effective way to work.

Mr. BARTON. That's true.

Ms. NICHOLS. If Congress wanted to work with the Agency on a process under which we would get more budget if we did things on time.

Mr. BARTON. Give me an example of a carrot that you would like to have other than just more money for your budget.

Ms. NICHOLS. Well, actually, that was the first thing I was going to suggest. You could target it towards things like travel funds.

Mr. BARTON. I would be open to that, because it is not just the EPA. If I do this hearing next week with the Federal Drug Administration, which I am going to do, we have the same problem on some of these deadlines that are missed and nothing happens.

Ms. NICHOLS. I would like more flexibility from you, and maybe one way to get it would be if you wanted to set up a system whereby we could demonstrate that we could get it.

Mr. BARTON. Okay. The final question, section 507 of title V sets up a Small Business Stationary Source Compliance Assistance Program, and within that it requires each State to come up with a citizens panel, I believe, of seven people at each State.

Have those panels been empaneled and, if so, are you aware if they are operating?

Ms. NICHOLS. I am aware that the States have small business assistance up and running. I can't answer the question about the panels. But I am aware that we have worked—I have the answer right here, the answer is yes, that the actual panels are in operation. I know that we have been working with the State small business assistance programs on how to help small businesses establish limits and stay out of title V if possible or, if they are in title V,

to get a general permit which could be issued as a very simple administrative matter.

Mr. BARTON. If you could submit for the record some sort of a summary of those panels' activities and their status, because that, again, is something that potentially could be very beneficial in some of the reforms that we are contemplating.

I want to thank you for testifying. There may be an additional hearing on this title, and I want you to think about the way we have done this hearing, because I know it was with some reluctance that you agreed to be the last witness as opposed to the first witness. But now that we have done it, we have much more time.

If you are the first witness, or whoever the administration official is, there is always a big time crunch. You may have several other panels, and you have to limit everybody to 5 minutes of questions, and when we have witnesses like yourself who are willing to be thoughtful and helpful and cooperative, I think it is beneficial to do it last so that, as we have done today, we gave every member of the subcommittee an opportunity to ask as many questions as we can reasonably permit. We have given you an opportunity to elaborate on all your answers, and we really have a better hearing record.

If you had been the first witness this morning, we would have had to limit everyone and limit your answers, and I don't believe we would have developed the record that we have developed. So I would hope that this may be a model, when we really want to get answers and not just posture politically, this is, I think, a preferable way to conduct a hearing.

Ms. NICHOLS. Mr. Chairman, we are willing to work with you on whatever format will serve the purposes of the committee the best, and serve the public.

Mr. BARTON. I thank the gentlelady.  
This hearing is adjourned.

[Whereupon, at 2:46 p.m., the subcommittee was adjourned.]

[The following material was received for the record:]

RESPONSES TO SUBCOMMITTEE QUESTIONS BY MARY NICHOLS, ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY

*Question 1:* I understand there are States that do not have well developed air permit programs to implement title V. But there are also states that have comprehensive existing programs that meet the minimum standards that Congress included in title V. Why must States revamp their existing permitting programs to meet prescriptive EPA regulations at substantial cost when there is little or no air quality benefit achieved by the EPA program for these States? There appears to be an excellent opportunity to integrate these programs. Why is EPA not taking advantage of this opportunity?

EPA Response: Many States do have well developed air permit programs that have worked well for many years in implementing their current State implementation plan (SIP) requirements. Even in these States, however, title V would add certain environmental benefits that may not be available under existing State permit programs, such as establishing single comprehensive documents that identify all of the applicable requirements for sources, the initial and annual compliance certifications, improved monitoring, additional enforcement penalties for violators and the ability of citizens to petition EPA. Our experience with States indicates that most States are moving to adopt key elements of title V, and we are confident that we can approve the vast majority of State title V programs.

As stated in Mary Nichols' testimony before your subcommittee and repeated in her June 20 response to Congressmen Dingell, Wyden, Waxman, and Klink and Congresswomen Furse and Eshoo on this issue, EPA agrees that title V programs should build on successful State programs, and that a one-size-fits-all approach

makes little sense in light of varying State programs developed over the years. As noted in the June 20 letter, EPA intends to provide greater flexibility in the development of title V programs by proposing to allow States to use their current minor source preconstruction review programs to process most permit changes and automatically incorporate those changes into title V permits.

We also indicated our intent to revise our rules for minor source preconstruction permit programs to clarify that States have discretion to match the amount of public review in permit actions to the environmental significance of such actions. If States need to change the provisions for public review in their minor source preconstruction programs, States would have the flexibility to make those changes as part of their title V or minor source preconstruction programs and would have up to five years to implement those changes. The EPA will continue to work with States that have existing effective permit programs to help them incorporate the beneficial aspects of Title V while maintaining program flexibility.

*Question 2:* I understand that you met with a delegation of California air agencies and industry this past Tuesday concerning local Title V implementation issues and EPA has several action items coming from that meeting. These items focus on EPA flexibility for approving State programs, based substantially on existing State permit programs and reliance on existing permits for title V permit application. What specifically is EPA doing to move forward on these issues? Could you please provide the committee with a report of your response to these action items?

*EPA Response:* The EPA staff met with the staff of the California air districts to discuss implementation issues raised in a June 2 letter from the California Air Pollution Control Officers Association (CAPCOA) to Mary Nichols, Assistant Administrator for Air and Radiation, EPA (Attachment 1). These issues deal primarily with how to implement title V programs in more streamlined ways and involve questions of interpretations of the current rule. Many of the solutions proposed by CAPCOA are reasonable, and we intend to explore ways of resolving these questions. We have already modified a recent title V implementation guidance memorandum to include a CAPCOA suggestion that information submitted within 2 years to the permitting authority should not be resubmitted with the title V permit application.

We are currently exploring what options we have under the current law to provide the other kinds of flexibility CAPCOA proposes, or to provide an alternative solution if we find a CAPCOA proposal is inconsistent with current law. We will provide the committee with any reports of our response as they become available.

An implementation working group has been formed to address concerns that have been raised regarding the implementation of the permit programs in California. This group consists of high level representatives from EPA Region IX, the California Air Resources Board, the California Air Quality Management Districts, and industry and industrial groups. Members of the group have made commitments to work together to develop solutions to these implementation concerns at regularly scheduled meetings during August.

*Question 3:* The administration has recently published a program for "Reinventing Environmental Regulation." This program has 25 action items, including Project XL, for industry and communitywide projects that advance environmental leadership. Could you explain how demonstrating implementation of title V through an existing California permitting program might fit within Project XL, as you suggested at the meeting with the delegation on Tuesday?

*EPA Response:* The Project XL program is designed to replace existing regulatory requirements with alternative environmental management strategies that will achieve better environmental results at lower cost than expected to be achieved under existing law. Project XL can be implemented at one facility, across an industrial sector, within a community or at a federal government facility. Substantial savings can be realized and environmental quality enhanced through more flexible measures involving approaches such as pollution prevention. A title V permit coupled with other media control requirements can aid facilities, sectors, or communities in evaluating their current environmental strategies and assessing the feasibility and economic benefits of developing alternative strategies. The title V permit can then serve as the vehicle for implementing alternative air pollution control strategies.

*Question 4:* Please provide information on the number of EPA personnel, either in Washington, DC, or Regional offices and the number of contractors who are employed or who have been employed in the development of title V regulations? With regard to EPA personnel, please include both the total number of personnel involved in the development of title V regulations as well as the total FTE? With respect to contractor personnel, please specify not only the number of individuals involved, but the estimated value of the work completed, or in the process of being done, as well as a description of the work.



EPA Response: The title V regulations (parts 70 and 71) and associated revisions have been developed with the assistance of representatives from various EPA Headquarters and Regional offices, permitting authorities, and industrial groups. The principal authors for all title V regulations have been Headquarters personnel (technical, policy, and legal staff) with Regional Office staff providing advice and consultation. In Headquarters, more than 40 individual staff members have been significantly involved with the development and implementation of title V regulations. The combined workload totals more than 21 FTE of effort. No contractual assistance was involved in the actual drafting or preparation of the title V regulations. However, contractual assistance was obtained from 5 consulting firms over the last 5 years to help perform activities involved with organizing the public comments, docket preparation, Regulatory Impact Analysis support, and preparation of a legislative checklist. Since 1990, \$808,000 in contract funds were authorized to aid EPA to complete these efforts. This translates to approximately 12 FTE.

*Question 5:* During the same hearing, I requested a summary of the current status of the Small Business Stationary Source compliance Assistance Program under Section 507. In specific, I am requesting information regarding the implementation of this program in various States and a description of the general operation of these panels.

EPA Response: A total of 35 States have a Section 507 Small Business Compliance Advisory Panel (CAP) in place or partially appointed. Attachment 2 contains a table which indicates the status of the CAP in each state.

The CAP, which is a politically appointed group, was included in the provisions of Section 507 to provide guidance and feedback on the overall effectiveness of the Small Business Stationary source compliance Assistance Program (Small Business Program), and ensure that the needs of small business stationary sources have been adequately addressed. The guidelines for implementation of the CAP were kept to a minimum, in order to allow maximum flexibility among the States. Each State was encouraged to develop a program structure to best address their unique business and political climate. This has lead to a wide variety of approaches to the development and operation of the CAP's among the States.

In late 1995, the States will provide their first report on the overall effectiveness of their Section 507 programs, as well as the difficulties encountered. These reports will be submitted to EPA's Small Business Ombudsman, who will then summarize the information in a report to Congress expected early in 1996.

Please note that the following two questions were asked at the May 18 hearing and were contained in the transcript of the hearings.

*Question 6:* For those States that have not yet had their permit programs approved by EPA, when does EPA expect to have the process completed?

EPA Response: As of mid-July, the EPA has approved 14 State and 35 local programs out of an expected 56 State/territory programs and 60 local programs. In addition, EPA has proposed approvals for 13 State and 11 local programs. With limited exception, the EPA expects to propose approval or publish a final action in the Federal Register for all remaining programs by November 1995.

*Question 7:* In the May 18 hearing, you asked whether section 502(b)(10) of the Clean Air Act (Act) prohibits States from requiring a permit revision when a source undertakes a change that does not alter the rate of its air pollution emissions or increase its total air pollution emissions. You also asked whether State law may preempt section 502(b)(10).

EPA Response: Section 502(b)(10) of the Act requires State title V programs to include provisions for allowing changes within a facility without requiring a permit revision, if those changes are not title I modifications and if those changes do not result in emissions exceeding the emission levels allowed under the permit. This section allows for such changes if the State and EPA are notified by the applicant in writing 7 days before making the changes. This means that a State may not require a title V permit revision if a source makes an emission change that meets these requirements. The EPA believes that the flexibility afforded by section 502(b)(10) is a mandatory minimum element of State permit programs, and that this provision was enacted by Congress to provide additional flexibility to sources.

Section 502(b)(10) specifically excludes "modifications under any provision of title I of the Act" from the scope of the flexibility afforded by this provision. The EPA takes the view that Congress could not have intended this term to include changes that are processed under State minor new source review programs, as such an interpretation would nullify some of the flexibility that Congress had intended to provide sources under title V. Consequently, EPA intends to publish, in the near future, supplemental proposed revisions to its title V regulations that explicitly define title I modifications as to including minor new source review actions.



While State law may not preempt the flexibility afforded companies under section 502(b)(10), States are not preempted from implementing their State minor source preconstruction programs in conjunction with title V. To help States take full advantage of the flexibility available under title V, EPA's proposed supplemental rule-making notice will encourage States to help companies develop emission caps so that changes can be made at a source without triggering the need for case-by-case minor new source review as long as the cap provides for compliance with the applicable minor new source review requirements that result from the change.

The design of an emissions cap will depend on the nature of the prospective source operation and the scope of the relevant applicable requirements, including the State's new source review program. For example, section 502(b)(10) would allow a title V permit to define how future changes at a source could occur in a manner that meets the relevant minor new source review requirement. The title V permit itself may also define the scope of future new source review obligations for the source, so long as this is allowed by the State's program. Under this "advanced new source review" approach, compliance is determined beforehand so that the source may undertake preapproved changes without going through case-by-case minor new source review. Such caps will ensure that companies can avail themselves of the flexibility provided by section 502(b)(10).

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OHIO MUNICIPAL ELECTRIC ASSOCIATION  
June 16, 1995.

Hon. Joe Barton  
U.S. House of Representatives,  
Chairman, House Commerce Committee  
Oversight and Investigations Subcommittee  
Washington, DC

Re: Comments for official record of May 18, 1995 Subcommittee Hearing on Title V of the Clean Air Act Amendments of 1990

DEAR CHAIRMAN BARTON: On behalf of the Ohio Municipal Electric Association (OMEA), which represents the legislative interests of Ohio's municipal electric systems, we ask that the following comments be officially entered as written testimony for the May 18, 1995 hearing of the Oversight and Investigations Subcommittee hearing on Title V of the Clean Air Act Amendments of 1990 (CAAA).

Fourteen of Ohio's 84 municipal electric systems have operable generating plants. These plants are mostly small, diesel/dual fired internal combustion engines, combustion turbines and coal and natural gas-fired boilers. Many of these units are only run a few hours a year to meet peak demand and emergency power needs. In addition, American Municipal Power-Ohio, Inc. (AMP-Ohio), the wholesale power supplier and trade association for 77 of Ohio's municipal electric systems, operates a 200-megawatt coal-fired base load generating plant and 10 diesel internal combustion engines (with 12 to be added by the end of summer) that supply power to public power communities across Ohio.

As part of the regulated community, Ohio's municipal electric generators support flexible, sensible, common-sense environmental regulation based on cost/benefit analysis, sound science, and reasonable risk assessment. As a result, various items in the CAAA, and in the resulting U.S. Environmental Protection Agency implementation plans, are of concern to Ohio's municipal electric generators because of costs and complicated compliance requirements. In recent months, the U.S. EPA has taken steps in the right direction by addressing some of these areas. It's important for Congress to promote this reform trend, and we are encouraged by your subcommittee's decision to hold hearings on the CAAA.

A number of the CAAA issues we have concerns about are related to the permitting provisions of Title V, including: (1) timeliness of permitting actions; (2) applicability criteria based on potential to emit rather than actual emissions; (3) compliance certification requirements; (4) enhanced monitoring; and (5) building on existing state implementation plans.

*1. Timeliness of Permitting Actions.*—U.S. EPA estimates that 46,000 Title V permits need to be processed nationwide. In addition, many facilities are modifying their existing permits to avoid Title V permitting. Coupling this workload with U.S. EPA's desire to require Title V permit modifications for minor changes, the permitting process will become protracted and unresponsive to the regulated community. Inability to bring new generation on-line quickly hinders our ability to meet the needs of our residential, commercial and industrial customers.

*2. Potential to Emit Versus Actual Emissions.*—By requiring facilities to obtain Title V permits based on the potential to emit versus actual emissions, the U.S.



EPA is pulling small sources of emissions into the Title V permitting process unnecessarily. This will only bog things down, slow the process for major sources of environmental significance and increase permitting/regulations and administration costs for small sources. To be fair, the U.S. EPA has tried to provide some relief in this area by allowing an exemption for entities whose actual emissions are only 20 percent of the major source criteria; however, an exemption for 80 percent of the major source criteria is more realistic.

3. *Compliance Certification.*—The requirement that an executive must certify that his facility is continuously in compliance is fraught with problems. Continuous compliance suggests that a facility must be in compliance at every moment in time. By their very nature, combustion processes and emissions are dynamic, sometimes exceeding established emission limits for temporary periods. On the whole, the facility may have an excellent compliance record, but these insignificant excursions make it virtually impossible for an executive to certify continuous compliance. U.S. EPA has said that a certification for intermittent compliance will not necessarily trigger an enforcement action. However, such discretion may not be used by other parties (e.g., environmentalists) that have the ability to bring enforcement action under CAAA.

Understand, we are not against certification of compliance. However, we think there needs to be some workable definition of what continuous compliance means, so that publicly owned power plants do not suffer from expensive enforcement actions over temporary excursions that at times do occur from utility operations.

4. *Enhanced Monitoring.*—In calling back a proposed rulemaking on enhanced monitoring, the U.S. EPA showed recognition of the impact the rule would have had on small sources. As participants in the stakeholders meetings to develop a new rule, we are encouraged that the agency is moving in a direction of using existing operations and maintenance information to verify compliance with emission standards. This is especially important for small generators who would have had to install expensive continuous emissions monitoring equipment under the initial rulemaking.

The CAAA says that all major sources must have enhanced monitoring. The term major source means 100 tons or more of any criteria pollutant and is somewhat misleading. Just because a facility qualifies as a major source does not mean that it is a major contributor to the overall pollution load. For example, each of AMP-Ohio's fourteen members with generation are classified as major sources, but the entire group is only responsible for 0.7 percent of Ohio's sulfur dioxide load (similar statistics hold for other criteria pollutants).

Clearly, we are a small player. Yet, because monitoring costs are independent of the volume of pollution produced, small sources will bear a disproportionate share of the costs for a program that is supposed to reduce emissions. Doesn't it make more sense to focus on the truly large sources and leave small sources out of the program?

5. *Utilizing Existing State Implementation Plans.*—The Ohio EPA has a solid, workable permitting process already in place. A number of other states also have good systems. If the goal of Title V is to ensure a flexible, simplified permitting process, then the U.S. EPA should carefully examine the state plans already in place before creating additional requirements for facilities in those states.

If you have any questions regarding this issue, please call me or Randy Meyer, our manager of environmental affairs at (614) 890-2805

Sincerely,

JANINE A. MOON, *Executive Director.*



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